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D STATES

# SUPREME COURT OF THE UNITED STATES.

## No. 160.

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MOTT BEDELL, LIBELLANT AND APPELLANT,

vs.

THE STEAMSHIP "POTOMAC," HER TACKLE, &c., JOHN E. PARSONS ET AL., CLAIMANTS.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 154 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Mott Bedell, lib'l'nt, &c., against the steamship "Potomac," her tackle, &c., claimants, &c., as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 21st day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-second.

[SEAL.] KENNETH G. WHITE, *Clerk.*

1 To the honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

The libel and complaint of Mott Bedell, owner of the schooner A. V. Bedell, against the steamer Potomac, her tackle, apparel, and furniture, in a cause of collision, civil and marative, alleges as follows:

First. That this is an action founded upon a marative tort, and the said vessel is now within this district.

Second. That on or about the 7th day of July, A. D. 1859, the said schooner being in all respects properly manned and equipped, and bound on a voyage from New York to Alexandria, was proceeding up the Chesapeake bay, at about one o'clock a. m. of that day; had arrived at a point not very far from the Rappahanock light-boat; that the wind was then blowing about N. W. by W., about four-knot breeze, and the said schooner sailing as close as possible to the wind, the night being tolerably clear; that while so sail-
2 ing close-hauled, as aforesaid, a light was discovered from the said schooner directly ahead of her, which, upon examination, was found to be coming in the same line with the schooner; that said schooner was kept upon her course, and the said steamer could have easily seen, and was bound to avoided, but, instead of so doing, held her course and ran within a very short distance of the schooner, heading directly for her; that when it was observed that said steamer was not porting her helm, and was apparently paying no attention to the schooner, and making no effort to avoid her, she was loudly hailed, and when the danger of being run into became imminent, and no change was made in the course of the steamer, and no slacking of her speed or stopping of her engine, the helm of the schooner was ported, that being the only way, under the circumstances, to give the schooner the slightest chance to avoid total destruction; that, notwithstanding all such efforts, the said steamer most carelessly ran into said schooner, without even hailing, or even slacking her speed,

her in her starboard side, and sunk her at once, giving the crew scarcely time to escape with their lives.

3 Third. That said accident was caused by no neglect or want of care or skill on the part of the schooner, which had a competent lookout stationed, and her master also on the watch, but was caused solely by the want of care on the of the the steamboat, which had no proper lookout, as the libellant charges, and improperly held her course, at a rapid and improper speed, till just up to the schooner, and neglected to port her helm, as she could and should have done, thus avoiding all the danger, but, to the contrary, ran towards and into the schooner, and sunk her, as aforesaid.

Third. That by reason of the said collision, the libellant was sustained damage in the top of his said vessel and in the expense of attempting to raise her, (which attempt, although made honestly and in good faith, proved unsuccessful,) the sum of about fifteen thousand dollars, for which sum he claims a lien upon the said steamer, her engine, tackle, apparel, and furniture; that all and singular the premises are true, and within jurisdiction of this honorable court. Wherefore the libellants pray that process, in due form of law, may issue against said steamer Potomac, her engine, tackle, apparel,

4 &c., and that all persons having any interest therein may be compelled to appear and answer, upon oath, all the matters herein propounded, and that the said steamer may be condemned and sold, to pay the amount of the libellant's claim, with interest and costs, or that this hon. court would decree to the libellant such other or further relief as he may be entitled to receive in the premises.

MOTT BEDELL.

BENEDICT, BURR & BENEDICT, *Proctors.*
E. C. BENEDICT, *Advocate.*

Sworn before me this 18th day of Oct., 1859.
[SEAL.] WM. D. JONES,
*Notary Public.*

Endorsed: 15, 499. U. S. District Court, in admiralty. Mott Bedell *vs.* The steamship Potomac, &c. Libel. Benedict, Burr & Benedict, proctors for libellant. Filed Oct. 18, 1859.

5 District Court of the United States for the southern district of New York.

*Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the* 18 *day of Oct.*, 1859.

Whereas a libel was filed in this court on the 18th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, by Mott De Witt against the steamship Potomac, her engine, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said vessel may be condemned and sold, &c.; and the said

libellant and Thomas B. Harris, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

MOTT BEDELL.
THOS. B. HARRIS.

Taken and acknowledged this 18 day of October, 1859, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas B. Harris, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

THOS. B. HARRIS.

Sworn to this 18th day of October, 1859, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

Recorded 18th day of Oct., 1859.
——— ———, *Clerk.*

6
7 *Libel for damages by collision*, $15,000.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas, a libel hath been filed in the District Court of the United States for the southern district of New York, on the 18th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, by Mott Bedell agst. the steamer Potomac, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamer or vessel, her tackle, &c, may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamer

or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 8th day of Nov'r next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 18th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth.

GEO. F. BETTS, *Clerk.*

BENEDICT, BURR & BENEDICT,
*Proctor for Libellant.*

8 In obedience to the within monition, I attached the therein described, on the day of , and have given due notice to all persons claiming the same that this court will, on the day of inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof should no claim be interposed for the same.

Dated 8 Nov., 1859.

ISAIAH RYNDERS,
*U. S. Marshal.*

Endorsed: Vol. 15. Page 499. Southern district of New York. United States District Court. Mott Bedell *vs.* The steamer Potomac, her tackle, &c. Monition, ret'ble 8 Nov., 1859. Benedict, Burr & Benedict, proctor for libellant. Filed 8 Nov., 1859. I hereby depute to execute the within process. Dated Oct. 18, 1859. Isaiah Rynders, U. S. Marshal.

9 At a stated term of the District Court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the 19th day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the honorable Samuel R. Betts, district judge.

THE STEAMER POTOMAC, HER TACKLE, &C., *asm.* MOTT BEDELL.

And now Henry B. Cromwell, himself on his own behalf, and on behalf intervening for the interest of and for the interest of others, owners of said vessel and interested therein, appears before the hon-

orable court and makes claim to the said vessel, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of Mott Bedell and the said Henry B. Cromwell avers that the claimants were in possession of the said vessel, her tackle, at the time of the attachment thereof, and that the person above named are true and bona fide owner of the said vessel, her tackle, &c., and that no other person is the owner thereof; and the said claimants the true and lawful bailees as owners; wherefore they pray to defend accordingly.

Affirmed to and subscribed this 19th day of October, 1859, before me.

JOSEPH BRIDGHAM,
*U. S. Commissioner.*
MAN & PARSONS,
*Proctors for Claimants.*

10 Endorsed: Vol. No. United States District Court for the southern district of New York. The Steamer Potomac, her tackle, &c., *asm.* Mott Bedell. Man & Parsons, proctors for claimants. Claim of owners Cromwell, &c. Filed the 20 day of Oct., 1859.

11 District Court of the United States for the southern district of New York.

*Stipulation entered into pursuant to the rules and practice of this court.—Filed the 19th day of Obtober*, 1859.

Whereas a libel was filed in this court, on the 18th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, by Mott Bedell against the steamer Potomac, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer may be condemned and sold to pay the demands of said libellant, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants, or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by H. B. Cromwell—

Now, therefore. it is hereby stipulated and agreed. for the benefit of whom it may concern, that the stipulators undersigned shall be and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above-named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal, by the appellate court.

H. B. CROMWELL.
ELISHA A. PARKER.

Taken and acknowlged this 19th day of October, 1859, before me.
JOSEPH BRIDGHAM,
*U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

E. A. Parker, party to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

E. A. PARKER.

Sworn to this 19th day of October, 186 , before me.
JOSEPH BRIDGHAM,
*U. S. Commissioner.*

Recorded the 19th day of October, 1859.
G. F. B., *Clerk.*

12
13 District Court of the United States for the southern district of New York.—In Admiralty.

*Stipulation entered into pursuant to the practice of this court.—Filed the* 19 *day of October*, 1859.

Whereas a libel was filed on the 18th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, by Mott Bedell against the steamer Potomac, her tackle, &c., for the reasons and causes in said libel mentioned; and whereas the said steamer is now in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and by a consent signed by the proctors for libellant, it has been agreed to discharge the said vessel from custody, on cl'm'ts executing stipulation for costs and value the latter in the sum of $16,000, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the cl'm'ts. or their surety, execution for the above amount may issue against their goods, chattels, and lands.

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall, at any time, upon the interlocutory or final order or decree of the said District Court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree to Mann & Parsons, esquires, proctors for the claimants of said ste'r, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

H. B. CROMWELL.
ELISHA A. PARKER.

Taken and acknowledged this 19 day of Oct., 1859, before me.
JOSEPH BRIDGHAM,
*U. S. Commissioner.*

14 SOUTHERN DISTRICT OF NEW YORK, *ss:*

E. A. Parker, party to the above stipulation, being duly sworn, deposes and says that he resides in the city of Brooklyn, [that he resides in the city of Brooklyn;] that he is worth the sum of thirty-two thousand dollars over and above all his just debts and liabilities.

E. A. PARKER.

Sworn to this 10th day of Oct., 1859, before me.

JOSEPH BRIDGHAM,
*U. S. Commissioner.*

Recorded this 10 day of Oct. 1859.

G. T. B., *Clerk.*

15 At a stated term of the District Court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Thursday, the 20 day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel R. Betts, district judge.

THE STEAMER POTOMAC, HER ENGINE, TACKLE, &c.
*ad.*
MOTT BEDELL. } 15. 499.

On filing consent to stipulate, signed by the proctors for libellant and claimants, and the terms of said consent being complied with, on motion of Man & Parsons, proctors for the claimants, it is ordered that the appearance of the claimants be and the same is hereby entered, the vessel discharged from custody, and the stipulation for value to represent said vessel.

16 Endorsed: Vol. No. United States District Court for the southern district of New York. The steamer Potomac, &c., engine, tackle, &c., *ads.* Mott Bedell. Order to discharge, &c. Man & Parsons, proctor for cl'm'ts. Filed the 20 day of October, 1959.

17 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday the 8th day of Nov'r, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Hon. Samuel R. Betts, district judge.

MOTT BEDELL
*v.*
THE STEAMSHIP POTOMAC, her tackle, &c. } 15. 499.

The marshal having returned the monition issued in this cause; that he had attached the steamer Potomac, her tackle, &c., and had not given due notice, &c.

Whereupon Messrs. Man & Parsons appears for the claimants, who have one week to file and perfect their answer herein.

18 Endorsed: Vol. No. United States District Court for the southern district of New York. Mott Bedell *v.* The st. Potomac, &c. Order for time on return of ,process. Man & Parsons, proctor for cl'm'ts. Filed 8th day of Nov'r, 1859.

19 To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

The claim and answer of Henry B. Cornwell, Joseph Noble, Barnabas Hammett, and Asa Packer, Samuel D. Babcock as trustee, and Daniel Cromwell, jr., and Ann W. Cromwell, as administrators of all and singular the goods, chattels, and credits which were of William D. Cromwell, deceased, sole and only owners of and parties in interest in the steamer Potomac, her tackle, apparel, and furniture, to the libel and complaint of Mott Bedell, alleges and articulately propounds as follows:

First. That the said claimants are the sole and only owners of, and persons interested in, the said steamer Potomac, her tackle, apparel, and furniture, and as such claim the same.

Second. That the claimants are ignorant whether or not the said libellant is or was the owner of the schooner A. V. Bedell, and leave him to his proof thereof.

Third. That the allegations of the second article of said libel are not true, and these claimants deny the same, except in so far
20 as the same agree with the following, which the claimants allege to be a true statement of the facts pretended to be set up in second article libellant's libel:

On July 6, 1859, at 1 o'clock in the afternoon, the said steamer Potomac, being in all respects well and properly manned, apparrelled, and equipped, left the port of Baltimore on an intended voyage to Norfolk, and thence for New York. At 25 minutes past 12 o'clock, in the morning of July 7, 1859, the said steamer then having reached a point in the Chesapeake bay, about three miles south of the Rappahannock river, and being on a due south course, going at a speed of about nine knots an hour, the wind blowing from the westward about a six-knot breeze, the night being a starlight night and tolerably clear, so that a light could be distinguised on the water a long distance, though it was difficult, except for a short distance, to distinguish other objects, a schooner was sighted about half a point on the starboard bow of the steamer; that the said schooner had no lights set, and it was impossible for those on board the steamer, when the schooner was first seen, to tell in which direction she was sailing, though it was soon seen that she was sailing in a northerly direction, and on a course which would have her to the westward of the
21 steamer; that the course of the steamer was thereupon changed so as to bring the schooner about two points on the starboard bow of the steamer, with the intention of giving her more room, and passing her farther to the eastward; that it was soon

thereafter noticed by those on board the steamer that the schooner was changing her course also to the eastward, and so as to bring her directly into collision with the steamer, to avoid which the course of the steamer was thereupon changed immediately rapidly further to the eastward and her engines stopped, speed slackened, and the vessels having then reached very near to each other and the schooner still continuing to change her course and keep away, the second mate of the steamer, being the officer then on deck and in charge of the steamer, cried out loudly, hailing the schooner, "Starboard your wheel," notwithstanding which the wheel of the schooner was put hard aport, and the vessels being then so near as to make it impossible to avoid a collision, the stern of the steamer struck the schooner about at her forerigging, and in a short while the schooner sunk; that the steamer was to the eastward of the schooner when she was first seen by those on board the steamer, and that if the vessels had then continued on their respective courses they would have passed each other, the steamer passing to the eastward; that the helm of
22 the steamer was put to starboard to give the schooner still more room, and that the collision was occasioned by the carelessness of the schooner in changing her course, and by reason of her not carrying a light, so that the movements could have been more readily distinguished and she seen a greater distance; that the steamer received on board immediately after the collision the captain and crew of the schooner, (which was then ascertained to be the schooner A. V. Bedell,) where every attention was paid them, and that the captain and mate of the schooner freely declared that the collision had happened for the reason that the captain of the schooner, who was in charge of her at the time, did not understand the steamer's lights, but thought that the steamer was heading to the northward and westward, and was further distant at the time he changed his course than she was; that he should not have changed his course, and that the collision would not have happened had the mate of the schooner, who understood the steamer's lights, been in charge at the time; that at the time the steamer had a white light at her bow, a red light on her port, and green light on her starboard side, and a white light at the main peak, as required by law; that no hail was heard
23 from the schooner on board the steamer until the vessels struck, save "steamer ahoy," and that when the vessels struck, the course of the schooner was to the southward of east and directly before the wind.

Fourth. That the said accident was caused by no neglect or want of care or skill on the part of the steamer, which had a competent lookout properly stationed, but was caused solely by the want of care on the part of the schooner, as above detailed; that it is not true, and that claimants deny that the steamer improperly held her course, or that she continued at a rapid or improper speed till just up to the schooner, or that the steamer should have ported her helm, or that by so doing all danger would have been avoided, or that the steamer ran towards and into and sunk the schooner; as to whether the schooner had a competent lookout the claimants are ignorant, and leave the libellant to his proof.

Fifth. That the claimants are ignorant of any of the matters alleged in the fourth article of the libel, and therefore deny the same.

Sixth. That all and singular the premises are true.

24 Wherefore the claimants pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

H. B. CROMWELL.

Affirmed before me this 8th day of November, 1859.

[SEAL.] DAN'L SEIXAS, *Notary Public.*

Endorsed: 15. 499. U. S. District Court, in admiralty. The steamship Potomac, &c., at the suit of Mott Bedell. Answer. Mann & Parsons, cl'mts' proctors. Filed Nov. 9, 1859.

25 At a stated term of the District Court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday the 16th day of Feb., in the year of our Lord one thousand eight hundred and sixty-five.

Present, the Honorable Samuel R. Betts, district judge.

MOTT BEDELL
*v.*
THE STEAMSHIP POTOMAC, &c. } 15. 499.

This cause being called in its order on the calendar, ordered hearing.

Pleadings read. Evidence for libellant; deposition of Geo. Liebbrane read; deposition of Alex. Baker read; Mott Bedell (libellant) sworn; Jesse Mott sworn.

Evidence for claimant: Deposition of Capt. Geo. W. Morton read; deposition of John P. Foot read; deposition of George F. Stone read; deposition of James Baymore read; deposition of William Robertson; deposition of John Burn.

John H. Clark sworn.

Testimony closed.

Points and briefs to be submitted.

C. A. V.

26

27 U. S. District Court.

MOTT BEDELL
*v.*
THE STEAMSHIP POTOMAC.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George Liebbrane, of Ohio, being sworn, says, he was on the A. V. Bedell, schooner, at the time of the collision with the Potomac. He was a hand before the mast and had the wheel at the time; had had

it half an hour as well as I can judge. It was clear to southward and eastward, but a little dark at northward and westward; little clouds rising up from the horizon; no moon but stars overhead; wind was about westnorthwest. We were in the Chesapeake bay, bound from Norfolk to Alexandria, Virginia. Breeze was pretty fresh; we were heading to northward, jammed upon the wind, steering by the wind.

A man, a sailor before the mast, whose name was Edward—we called him Ned—was on the lookout; he was stationed on the top-gallant forecastle, where the lookout is generally stationed. The captain was on the poop deck, promenading the poop deck fore and aft; the rest of the crew was turned in. We had four men all told
28 before the mast; another man was cook and steward. We had one mate; the mate was also below; his name was Gillespie; about half an hour after I got to the wheel, say about half-past twelve, midnight, I saw the light of a vessel ahead, a white light distant say half or perhaps a quarter of a mile.

I can't judge well of distances at night when vessels are rapidly approaching each other; we kept sailing to see whether she would not change her course; she did not change her course, and the captain ordered me to put the helm up; I did so, put the helm aport, hard-aport, our vessel then swinging off, both vessels coming toward each other. Steamer put her helm up also and kept running off, too. The captain hailed them and halloed out to them; he hailed her steamer ahoy, put your wheel down and let her luff up and keep her away from us, or you will be into us; she then came into us; hit us right abaft the forerigging; came on bows on, under full head of steam; cut right in, smashing in the whole side; after she struck I let go of the wheel and run forward and told the other fellows to hurry up and get aboard the steamer to save their lives; the steamer swinging round broadside on and our main boom, got afoul to boat davits, and we got aboard all hands; our vessel was in a sinking condition
29 and sunk in a minute and a half after she struck. The steamer proved to be the Potomac; when I first saw her I knew she was a steamer, because her lights were up high; saw no light but a white light; heard her bells ring after she struck; not before.

Q. What could you have done to prevent the collision? (Objected to.)

A. We could not do anything more than we had done, keeping the vessel off. I did not see that the steamer had any sails up. I heard no hails from the steamer. I think I should have certainly heard it if there had been a hail from the steamer.

We were loaded with a general cargo; there was light on our vessel forward on the bowsprit. I am sure it was burning, because steering by the wind I could see it reflected on the jibboom. I did see it so when I saw the steamer ahead. I could see over the poop deck; it came up to about my waist; the poop deck extended forward to the mainmast, within a foot or so, and extended each side to the rail, so that to pass fore and aft you had to go over it.

Being cross-examined, he says:

I am a German by birth; had been with Bedell since the preceeding February; the collision was in July.

I saw the light hung on the bowsprit; this same man had
30 hung it; am sure it was hung that evening. It was about two minutes, as near as I can come to it, before the collision that I put my helm hard up. I went to the wheel at midnight; the only light I saw on the steamer was a white light; there was only one light that I made out, being on the foremast.

I say the steamer had no other light than the one white light. I will stick to that. If she had had other lights I could have seen them.

GEORGE LIEBBRAND.

Sworn to before me this 23d day of June, 1860.

W. D. JONES,
*Notary Public*, 74 *Wall St.*

Endorsed: U. S. Dist. Court. Mott Bedell *v.* S. S. Potomac. Copy deposition of George Liebbrand. Benedict, Burr & Benedict, 74 Wall street.

31 U. S. District Court.

MOTT BEDELL
*v.*
THE STEAMSHIP POTOMAC.

SOUTHERN DISTRICT OF NEW YORK.

Alexander Baker, examined as a witness on the part of lib't, and sworn, says:

I follow the sea and am now master of a steamer, and I am about to leave this State to-morrow. I went to the schooner A. P. Bedell the next day after she was sunk by the steamer Potomac to try and get her up. I went down on her decks in a diving dress; she lay off the mouth of the Rappahannock on the bottom; she lay about S. S. E. from the Rappahannock light-boat, and about in the channel, rather on the western side of it; she lay head about west; she had a wound on the port side, a square blow abaft the forerigging. It was a cut straight in, in some six streaks of her deck; she went right in three or four feet. I found it impossible to raise her.

*Cross-examined:*

She lay in seven fathoms of water; the Chesapeake is 12 miles wide there, perhaps 10 to 12 miles; we made an effort to raise
32 her; went from Norfolk; we tried to raise her and went to expense and worked for 5 or 6 months with steamers and vessels and the necessary appliances. The captain of the schooner employed us to go; we made a contract with the captain acting for Mr. Mott Bedell; she was 2 to 3 miles from the light boat; the chan-

nel is perhaps 3 miles wide there. I mean what you call the ship channel; when you speak of channel we mean ship channel; the blow was not a glancing blow; square; one side of the cut was as clean as the other.

ALEXANDER BAKER.

Sworn to this 17th October, 1862, before me.

WILLIAM D. JONES,
*Notary Public*, 74 *Wall st.*

Endorsed U. S. Dis. Court. Mott Bedell *v.* The S. S. Potomac, &c. Copy. Deposition Alexander Baker. Benedict, Burr & Benedict, 74 Wall st., N. Y.

33 U. S. District Court.

MOTT BEDELL
*vs.*
STEAMSHIP POTOMAC, Henry B. Cromwell, ex'r and cl't.

THURSDAY, *Feb'y 16th*, 1865.

Benedict B. & B., lib't; Man & Parsons, cl'ts.

(Pleadings read.)

George Lecbrand, (deposition.
Ander Baker (deposition.)

For libellant:

MOTT BEDELL, libellant, *sworn*:—

I was the owner of the "A. V. Bedell"—Enoch H. Ryder was the master of her at the collision—he is dead. I had known him 15 years. I built her in 1855. I have owned many vessels for many years. He was what I considered first-rate, as good a man as I ever had, and I have had many. He was very skillful; he sailed for me six years. He never had an accident in his life, he told me, but this—he never had any with me. I don't know where the man on the lookout is. He was a foreigner—could hardly speak English. Have tried to find him and have sent for him, but couldn't find him.

that he has seen him but that one time, and thinks he then said he was bound out immediately. Knew two persons on board the steamer at time. Burns and Robertson, whose testimony he had before taken.

34 One of them had called at his house, by witness request; the other had been once or twice, he believes, at witness' office; witness found him at hospital.

Jesse Mott: Master of vessel for nearly 40 years; has sailed fore and aft vessels; has known master of Potomac; went passenger with him, in Potomac from N. Y. to Norfolk, 4 or 5 years ago; thinks it was winter of 1860 or '61. (Obj'n by def't sub. dubitat admitted.) He said he hoped lib't might obtain pay't for sch'r, and thought he ought to. Witness, in his voyage, observed conduct of 2d mate on board, and found him apparently asleep in wheel-house, and no per-

Being cross-examined, he says:

I am a German by birth; had been with Bedell since the preceeding February; the collision was in July.

I saw the light hung on the bowsprit; this same man had
30 hung it; am sure it was hung that evening. It was about two minutes, as near as I can come to it, before the collision that I put my helm hard up. I went to the wheel at midnight; the only light I saw on the steamer was a white light; there was only one light that I made out, being on the foremast.

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31 U. S. District Court.

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SOUTHERN DISTRICT OF NEW YORK.

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*Cross-examined:*

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32 her; went from Norfolk; we tried to raise her and went to expense and worked for 5 or 6 months with steamers and vessels and the necessary appliances. The captain of the schooner employed us to go; we made a contract with the captain acting for Mr. Mott Bedell; she was 2 to 3 miles from the light boat; the chan-

nel is perhaps 3 miles wide there. I mean what you call the ship channel; when you speak of channel we mean ship channel; the blow was not a glancing blow; square; one side of the cut was as clean as the other.

ALEXANDER BAKER.

Sworn to this 17th October, 1862, before me.

WILLIAM D. JONES,
*Notary Public*, 74 *Wall st.*

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33 U. S. District Court.

MOTT BEDELL
*vs.*

Mott Bedell, (libellant.) sworn, owner: Enoch H. Rider was in command as master. Witness owned her about 15 years. Considers Rider a good seaman and trustworthy officer; sailed for witness 6 years or over; never meet with accident previous to this case; has not been able to find the man since, who was on the lookout.

*X-d.*

Sought for him imediately after the collision, and has enquired for him again recently, but has not found him; not seen him within 3 years, or perhaps more; but suit was then commenced; does not recollect that he has seen him but that one time, and thinks he then said he was bound out immediately. Knew two persons on board the steamer at time. Burns and Robertson, whose testimony he had before taken. One of them had called at his house, by witness request; the
34 other had been once or twice, he believes, at witness' office; witness found him at hospital.

Jesse Mott: Master of vessel for nearly 40 years; has sailed fore and aft vessels; has known master of Potomac; went passenger with him, in Potomac from N. Y. to Norfolk, 4 or 5 years ago; thinks it was winter of 1860 or '61. (Obj'n by def't sub. dubitat admitted.) He said he hoped lib't might obtain pay't for sch'r, and thought he ought to. Witness, in his voyage, observed conduct of 2d mate on board, and found him apparently asleep in wheel-house, and no per-

son in charge of deck; and witness cautioned him, and threatened to inform the master. Mate requested witness not to do so. This schooner was sharp, and it would not be probable she would come clearly round on a close hauled tack upon the wind in less than 3 or 4 times her length.

*X'-d.*

Known libellant 40 years; never sailed in a vessel of his. Witness has sailed sloops and schooners, never steamers; never seen capt. of of the Potomac but on one occasion.

*Defence.*

George W. Watson, master of Potomac, dep'n.

John T. Foote dep'n offered.

(Objected by the lib't inadmissible; the cross-examinations were not answered, *i. e.* 3 int'g. Objections pointed out, etc.. (Mr.
35 Benedict.) Mr. Parsons in reply. Court refuses to suppress proofs. Lib't excepts to refusal. Lib'ts counsel objects to adequacy of reply to int'g. Ans. of Foote, pilot, insisted by def't to be substantially full. Mr. Benedict objects to ans. to 4th int'y. Mr. Benedict: Answer of wit. applies only to 3d int'g. Counsel insists that 3d int'y applies, etc.)

George F. Stone and James Baymore's depositions.

*For libl't.*

2 depositions submitted to counsel for def't to be used as his own proof, declined and read by counsel for lib't.

William Robertson and John Burns' depositions.

*For defence.*

Capt. Watson's deposition applicable to the two last depositions.

John F. Foote's deposition applicable to the two last depositions. (Objected to by Mr. Benedict, 8th and 9th int'ys.)

Statements of [of] Robertson and Burns, contained in written papers, read at office of Man & Parsons.

(Objected to as legal evidence by lib'ts counsel. Admitted to be read by court.)

John H. Clark sworn: In 1859, one of firm of H. B. Cromwell & Co., till 1864. That Co. were agents of line of steamers to which Potomac belonged. Knew Foote, 2d mate of Potomac, and for 2 years
36 about; is now employed in gov't gunboat. Firm considered him an excellent man and reliable; continued in their service until he engaged in gov't. service. Witness has known Capt. Watson a long time; he is now engaged in service of gov't; his 'd. firm had high opinion of his character as an officer and seaman.

*X'-d.*

Witness not a nautical man; speaks of his capacity as seaman only from his general character as such; never stood watch with Foote.

Cur, adv. vult.

37 UNITED STATES OF AMERICA:

SOUTHERN DISTRICT OF NEW YORK,
*City, County, and State of New York, ss:*

Be it remembered, that on this 25th day of May, in the year of our Lord one thousand eight hundred and sixty-five, I, Charles W. Newton, a commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February, 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, George W. Watson, to testify and the truth to say, on the part and behalf of the claimant, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States, for the southern district of New York, wherein Mott Bedell is plaintiff and the steamer Potomac claimant.

And the said George W. Watson being about the age of forty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said George W. Watson, and he did thereupon depose, testify, and say as follows, viz:

I am a seafaring man, and am about to go out of the jurisdiction of this court, on a voyage to sea. I am at present captain of the steamer General Meggs, in the employ of the United States. When I leave New York, I expect to go to Hilton Head. I have been a master of a vessel twenty-four years; I have been on steam vessels about ten years, and have commanded steam vessels between
38 ten and eleven years. I was master of the Potomac at the time of her collision with the A. V. Bedell, on the 7th day of July, 1859. We were bound from Baltimore to Norfolk. On that voyage, we had a full crew on board at the time; the vessel was in good order in every way and seaworthy I was on deck when vessel struck, that is, I was in the pilot-house at the time. The Potomac has been going nine knots an hour; ten knots was her ordinary speed. It was the second mate's watch at the time, Foote's; I was in my room just before the collision; my room is separated by an inch board partition from the pilot-house. The first thing I heard was our man on the lookout sing out, "A sail a little on the starboard bow." I heard the second mate, as soon as the alarm was given, give an order to the man at the helm to starboard the helm. I then waited and listened, and heard the second mate give the order, "Steady the wheel." I then heard the second mate, after a litle time, hail the schooner,

and said: "Schooner, a-hoy; put your helm a-starboard." I then jumped into the wheel-house, and stopped the engine; I rung
39 the bell to stop the engine. When I got into the pilot-house, the schooner was broad on the starboard bow; then the collision took place. She came right into us. We were heading to the eastward at the time, and she was kept off before the wind; when I got out on deck, she had her starboard tacks aboard; then she was heading well to the soutward and eastward. The collision then took place. If the schooner had been steering to the northward up the bay, she would have had her port tacks aboard. The steamer had all her lights required by law lit; in fact, she had one more: she had a white light forward, in the stem, a red light on the port-side, green light starboard side, and a white light at the main peak. They were lit at sundown. The schooner had no light. It is customary for sailing vessels to carry lights generally at the end of the bowsprit. I can see a little light farther than I can see a vessel without a light. We struck the schooner just about the forerigging. I should think we struck her on her side as she was crossing our bow. The wind was from the westward; I should think west by north, about a six-knot breeze, I should say. It was about half past twelve, I should think, when it took place. Our course, at the time, was south.
40 The collision was produced by the ignorance or carelessness of the captain in putting up his helm instead of keeping his course; it would not have happened, if he had kept his course. The collision damaged the [damaged the] schooner three or four hundred dollars, besides damaging the cargo four or five thousand dollars. The crew of the steamer came on board of our vessel. It would not have been proper for the steamer to have ported her helm at that time. (Obj'n.) The effect of the steamer porting her helm would have been that the schooner would have sunk us instead of we sinking the schooner.

Q. What would have been the effect of porting the steamer's wheel with reference to the course of the schooner, before her helm was ported?

A. The collision would have been unavoidable. We would have gone, in that case, right across her bows, and the collision been unavoidable. When the crew came on board, I asked the captain what in the world he put his helm up for, and run across our bows? He replied he always done so when he met a steamer. He also said he mistook our lights, and thought we were further off than we was, and thought he was going round under our stern. (In brackets, objected to.) The name of the man at the steamer's wheel was
41 John Byrne; William Robertson was the man on the look-out; he was forward of the foremast, where all look-outs are; we reached New York about 40 hours after the collision. On my arrival, I went with Robertson and Byrne to Man & Parson's office, in Wall street. There they made a statement of the circumstances.

Q. What did Robertson then say with reference to what it was which occasioned the collision?

(Objected to by libellant's counsel.)

A. He said that he saw the schooner on the starboard bow, and that she put her helm up and ran across the steamer's bow.

Q. What did he state on that occasion that Mr. Foote did when he reported the vessel, if anything?

(Obj'n.)

A. That Mr. Foote told him to put his helm a-starboard.

Q. Did he say on that occasion what would have happened if the schooner had starboarded her helm when Mr. Foote hailed her to do so, and if so, what?

(Obj'n.)

A. He said the collision would not have taken place. When I came out of my room Mr. Foote was out on the forward deck. Stopping our engines when I rung the bell had some effect upon our speed before the collision; it stopped our vessel materially.

42 *Cross-ex'd.*

I went into my room about ten o'clock, and went to sleep; I rang two bells when I went into the pilot-house; that means, stop the engine. I found John Byrne in the pilot-house when I went in; that is all I did—ring the bells. I did not go out of the pilot-house before the blow. I had my hands on the wheel at the time of the collision. I did not take hold of the wheel before I pulled the bell. I saw the man at the lookout before I pulled the bell. I was standing at the wheel when I first saw him. The first thing I saw when I went into the pilot-house was the man on the lookout, and the second mate within ten feet or so of him. If we had then ported our helm the schooner would have struck us forward of the fore rigging on the port bow. I saw the bow-light on the steamer at the time of the collision, and I saw the other lights after the collision. The captain of the schooner was a small-sized man, dark complexion. I don't recollect whether Byrne or Robertson signed any statement at Man & Parsons' office.

G. W. WATSON.

43 Interrogatories to be administered to John P. Foot, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States in and for the southern district of New York, wherein Mott Bedell is libellant against the steamer Potomac, her tackle, apparel, and furniture, and Frederick Cromwell and others, as executors of the last will and testament of Henry B. Cromwell, deceased, Joseph Noble, Barnabas Hammett, and Asa Packer, Samuel D. Babcock, as trustee, and Daniel Cromwell, jr., and Ann W. Cromwell, as administrators of all and singular the goods, chattels, and credits which were of William D. Cromwell, deceased, are claimants on the part and behalf of the claimants, before the commissioner, in the writs heretofore annexed, namely:

First interrogatory. What is your name, age, place of residence, and occupation, and what was your place of residence and occupation in the month of July, 1859?

Second interrogatory. Do you know the libellants or either of the claimants herein; and, if so, which of them?

44 Third interrogatory. If you shall, in answer to the first interrogatory, say that in the month of July, 1859, you were an officer of the steamer Potomac, state how long you had been such, and how long, and in what capacity you had followed the sea.

Fourth interrogatory. Were you on the steamer Potomac at the time of her collision with the schooner A. V. Bedell, in the month of July, 1859; if so, in what capacity, and state fully the time, place, and circumstances of such collision?

Fifth interrogatory. If you were on the said steamer Potomac at the time of such collision, state further of how many men her crew then consisted, and whether or not she had a full compliment, and who were on deck at the time of the collision, and where stationed, and how long had they been so stationed?

Sixth interrogatory. Did you, subsequently to the said collision, have any conversation with the captain of the said schooner relative to the circumstances of the said collision; and, if so, when, where, and what did he say?

Seventh interrogatory. If you shall say you were on the deck of the said steamer Potomac at the time of the said collision, state when you went on deck and what you did, and where you were from

45 that time to the collision, and whether during any part of that time you were asleep.

Eighth interrogatory. Were you present at the office of Mann & Parsons, 64 Wall street, New York, shortly after the said collision, when John Byrne, who was at the wheel of the said steamer at the time of the said collision, made a statement in reference thereto; if so, when was it, and who were present at the time? Did the said John Byrne then and there state what was your first order after the said schooner was reported when you directed him to starboard his wheel; if so, what did he then and there state the same to be; what was the same? From the place where he, the said John Byrne, was stationed could he, on the evening of the collision, see you if in the wheel-house with sufficient distinctness to tell whether you were awake or asleep?

Ninth interrogatory. If you shall say you were present, as asked in the preceeding interrogatory, state whether or not William Robertson, who, at the time of the collision, was on the lookout of the steamer, was also then and there present and made a statement in reference thereto; if yea, did he state in consequence of what it was that the said collision happened: what did he state, if any-

46 thing, on that subject? Did he at the same time state how he first reported the said schooner; if so, what did he state on that subject? How did he, in fact, first report said schooner? Did he at the same time state what order he heard you give the man at the steamer's wheel, immediately upon his reporting the said schooner; what did he state on that subject, and what was your order? Did he at the same time say anything as to whether or not the schooner changed her course, or as to whether or not the steamer

kept off to the eastward as soon as the schooner was reported, or as to whether or not the said schooner would have gone clear if she had starboarded her helm when first hailed by you; if yea, what did he say on those subjects on that occasion, and how was the fact?

Tenth interrogatory. If you shall state that the said schooner changed her course before the said collision, state whether or not the same would have happened but for such change of course.

Eleventh interrogatory. After the collision was seen to be imminent from the steamer could her way have been so stopped as to have prevented the collision?

47 Twelfth interrogatory. Did the said schooner show any light on the evening of the said collision? Do you know whether or not sailing vessels usually carry a light on these waters at night; and, if so, do they or not?

Last interrogatory. Do you know of any other matter or thing material or necessary or that may tend to the benefit or advantage of the claimants in this cause; if yea, state the same fully and particularly as if you were thereunto specially interrogated?

MANN & PARSONS, *Cl'm'ts Pr's.*

Settled subject to all legal objections and exceptions.

BENEDICT, BURR & BENEDICT,
*Lib'ts Proc's.*

BENEDICT, BURR & BENEDICT: Take notice of the within interrogatories. Oct. 26, 1864.

Yours, &c.,

MANN & PARSONS, *for Cl'm'ts.*

Rec'd Oct. 27, '64.

48 Cross-interrogatories to administered to John P. Foot, a witness to be examined before the commissioners in the commission named and hereto annexed, upon interrogatories on the part of the claimants, in a certain suit pending in the District Court of the United States for the southern district of New York, wherein Mott Bedell is libellant against the steamship Potomac, her tackle, &c.

First cross-interrogatory. Have you received any letters or other written communications from any persons in reference to the testimony to be given by you under this commission; if so, please to state when the same was received and from whom, and annex the same and every such paper or communication to your answer?

Second cross-interrogatory. Have you now mentioned all the letters and communications which you have received relating to the testimony to be given by you under this commission, or intended in any way to effect the same; if not, now mention all such other communications, and annex the same to your answers?

Third cross-interrogatory. Have you, in order to answer
49 any interrogatory propounded under this commission, looked at any memorandum or other paper; if so, please now to

designate what interrogatories you have answered after refreshing your memory by such memoranda or paper; state also who wrote or made such memorandum or paper, and when, and annex to your answers all papers, writings, or memoranda which you have looked at preparatory to answering any interrogatory under this commission?

Fourth cross-interrogatory. If, in answer to the sixth interrogatory, you have stated any conversation had with the captain of said schooner, now describe the person with whom you had such conversation. Say who was present, and say whether you have stated all that was said by you or him in said conversation.

Fifth cross-interrogatory. Have you never been asleep on board the "Potomac" during the hours of your watch on deck?

Sixth cross-interrogatory. Who first rang the bell on board the Potomac after the schooner was discovered?

50 Seventh cross-interrogatory. If you state that you saw the schooner change her course, now state where you were standing at the time you saw said change? Did you make any remark to any person upon such change? and if so, what was it, and to whom made?

Eighth cross-interrogatory. How long a time would be required to stop the headway of the Potomac by the fullest and most prompt use of her machinery, as she was running when the schooner was discovered? How long a distance would she have run during such time?

Ninth cross-interrogatory. How many times have you been in the port of New York since the said collision took place?

Tenth cross-interrogatory. Did you have charge of the deck of the Potomac from the time the schooner was discovered till the blow?

Eleventh cross-interrogatory. If the schooner had made no change in her course, how far distant from her would the Potomac have passed her as she was running?

51 Last interrogatory. Do you know any other matter or thing of advantage to the libellant? If so, state the same fully and particularly.

BENEDICT, BURR & BENEDICT,
*Lib'l's Proctors, 74 Wall Street.*

Settled, subject to all legal objections.

MANN & PARSONS,
*Cl'm'l's Pr's.*

Endorsed: Gent.: Within are cross-interrogatories in this case. Oct. 27, '64. Yours, &c. Benedict, Burr & Benedict, lib'l's proct's. To Mann & Parsons, esq'rs, 64 Wall st.

U. S. District Court.

*Commission to take testimony of John P. Foot, issued to any commissioned officer of U. S. gun-boat Mt. Vernon.*

MOTT BEDELL
*vs.*
THE STEAMER POTOMAC, her tackle, engines, &c.

52 OFFICE OF CROMWELL'S STEAMSHIPS,
COR. WEST AND ALBANY STS.,
*New York, July* 6, 1864.

JNO. P. FOOT, pilot, st'r Mt. Vernon:

DEAR SIR: Your letter of July 4th is rec'd. It seems to be impossible to send a lawyer to Norfolk in time to take your testimony, but we would like you to come to New York, if possible, and give your testimony here. Try to come. If you cannot possibly leave, write to us, and tell the name of some principal officer on board of "Mount Vernon," who would be willing to take your testimony, should we desire him to do so; but try to come to New York, if you can. When you come into port again, let us know.

Yours, &c.,
H. B. CROMWELL & CO.

OFFICE OF CROMWELL'S STEAMSHIPS,
CORNER WEST AND ALBANY STS.,
*New York, Oct.* 17, 1864.

JNO. P. FOOT, steamship Mount Vernon:

SIR: The case of the collision of the "Potomac" and the schooner Bedell will soon come up, and it is very important that you
53 should come to New York and give your testimony in the case; we will pay all your expenses in the matter. See if you cannot get a furlough to come to New York. If you cannot possibly leave the ship, we will send you a list of questions for you to answer, and you can swear to it before one of the officers of the ship.

Write us, and tell whether you can come, if possible, without delay.

Yours, &c.,
H. B. CROMWELL & CO.

*Statement of John P. Foote.*

Captain was Geo. Wm. Watson, four years in employ of Cromwell; Josiah H. Beale, mate, five years on line; 4 seamen, 2 engineers, assistant, and 3 firemen; left Baltimore at 1 p. m. of Wednesday, July 6, 1859, for Norfolk and New York. At 25 minutes past 12 o'clock of the morning of the 7th, the lookout reported a vessel on the starboard bow. Foote sighted her on the starboard bow about half a point. The steamer was three miles south of mouth of the Rappahannock, in the Chesapeake. Should judge the schooner ¾ of a mile distant when first seen; starlight night; clear, no moon;
54 steamer had her lights set, white light at bow, red on port

side. green on starboard side, and white light on main peak; wind westward. about 6-knot breeze; steamer steaming due S. John Byrne was at the wheel, Wm. Robertson lookout. As soon as Foote sighted the schooner, told the man at the wheel, John Byrne, to starboard his wheel. He did so. Told him to give the steamer about 2 points of the schooner and steady. He did so. Soon saw that the schooner drew on the steamer, and then told the man to starboard his wheel more; did so. Then heard the captain's voice, and ring the bell, and in 3 minutes after first seen the vessel struck. Schooner was then going before the wind, with her helm hard a-port. Before we struck, hailed the schooner to starboard her wheel, instead of which he put it hard to port. The schooner's captain, when he came aboard, told Foote he did not understand steamer's lights; thought he should have passed the steamer's stern, and so ported his helm; that he ought to have kept his course; that he blamed no one but himself. It was Foote's watch. John Byrne and William Robertson in the watch; Robertson on the lookout; captain on deck, and mate. Before struck schooner, had no light.

55 *Statement of John Byrne.*

Was at the wheel at 12 o'clock; at 25 minutes after 12 first saw schooner; man forward sung out vessel ahead; second mate looked and saw vessel a little on starboard bow, and desired me to starboard my wheel, then to steady; did so; his order was, give her 2 points to starboard and steady; after a while he again told me to starboard; then second mase went out of wheel house and heard him hail "schooner, shift your helm," then struck; were steering at first S. exactly; was swinging off all the time to e'ward; gave her a couple of spokes to port to steady her; then starboarded her again; think the vessel fell off as much as 5 points; it was my 3d trip. See statement of 2 dmate.

*Statement of William Robertson.*

I was on lookout; 3 years in line; saw the vessel ahead a little on the starboard bow; standing by the forward of forehatch, called out vessel ahead on the starboard bow, to Foote; heard Foote tell man
56 to starboard his helm; afterwards saw schooner change her course; our vessel kept off to e'ward; before we struck, Mr. Foote hailed schooner to starboard his wheel; if he had done so would have gone clear; the collision happened through the schooner's fault in changing her course.

57 Deposition of witnesses produced, sworn, and examined the 14th day of November, in the year one thousand eight hundred and sixty-four, at the port of Beaufort, N. C., under and by virtue of a commission issued out of the District Court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein Mott Bedell is libellant, against the steamer "Potomac," her engines, &c.

John P. Foote, 1st class pilot in the U. S. Navy, attached to the U. S. steamer "Mount Vernon," aged thirty-nine years and upwards,

being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the claimants, doth depose and say, as follows:

Answer to interrogatory 1st, he saith: My name is John P. Foote; my place of residence is Baltimore; my age is thirty-nine years, July 9th, of this year; I was second mate of the steamer "Potomac."

Answer to second interrogatory, he saith: I knew Mott Bedell the libellant; I did know Henry B. Cromwell.

58 Answer to third interrogatory, he saith: Nineteen months; I had been to sea eighteen years; first as seaman, then as mate, then as master.

Answer to fourth interrogatory, he saith: Yes; I was part of the time first mate, and part of the time second mate; in the month of July, 1859, I was second mate; I sailed in the steamer Potomac from Baltimore at one o'clock p. m., on the 6th day of July, 1859, for New York via Norfolk; at 8 p. m. the watch was set; Mr. Josiah H. Beale had first watch from eight to twelve; I was then called and took charge of the deck; at twenty-five minutes past twelve o'clock of the morning of the seventh, the lookout, William Robinson, reported a vessel on the starboard bow; I ordered the man at the wheel, John Byrne, to starboard the helm two points; in a minute I saw the vessel myself about a half point on the starboard bow; I then ordered the man at the wheel to steady the helm. The steamer was then three miles south of the mouth of the Rappahannock, in Chesapeake bay, in the ship channel. When first seen I should judge the schooner was about three-quarters of a mile distant; it was a clear night, but no moon; the steamer had her lights all set; white light at

59 bow, red light on port side, green on starboard side, and white light on main peak; the lights were clear and bright, and could be seen from two to three miles distant. There was a moderate breeze from the westward; the steamers course was due south; I soon discovered that the schooner was nearing us; I told the man at the wheel to starboard the helm; he did so; I then heard the captain's voice on board the schooner saying, "Steamer ahoy." Captain George W. Watson rung the bell and stopped the steamer; I then told the captain of the schooner that the steamer was stopped when the schooner was twenty yards distant; I told the capt. that it was his own fault that he had no lights up, and that he was keeping his schooner right across our bows. The two vessels collided immediately after, and the schooner began to sink, when the capt. and all the crew came on board; I rescued the capt. myself and hauled him over the rail in the starboard gangway; I asked him why he kept his vessel before the wind right across our bows; he replied that he did not understand the steamers lights until it was too late; I then asked the captain why he did not have a man at the wheel; he answered me that he left the wheel to hurry the man up to get a light, but he did not get it; if he had not altered his course he would have

60 cleared our starboard beam a hundred yards; while talking with the captain he said he had no one to blame but himself, and that it was his own fault.

Answer to fifth interrogatory, he saith: Her crew consisted of captain, two mates, four seaman, two engineers, and one oiler, three firemen, one cook, and one steward, which was considered a full complement. There was on deck at the time of the collision the captain, myself, in charge of the deck, John Byrne, seaman at the wheel, and William Robinson, on the lookout; they were thus stationed from twelve o'clock to the time of collision.

Answer to sixth interrogatory, he saith: I had conversation with the captain after the collision; which I stated in answer to question No. four.

Answer to seventh interrogatory, he saith: I went on deck at twelve o'clock; after stationing the men I looked after the lights and saw that they were all right, and then went into the wheelhouse to see if the ship was steered properly; I was not asleep at any time during my watch.

61 Ans. to eighth interrogatory, he saith: I was present at the office of Man & Parsons shortly after the said collision, when John Byrne made a statement thereto. At the time there were present Capt. Watson, John Byrne, William Robinson, and, I believe, Mr. Beale, the first mate. He did, and stated that I ordered him to starboard two points, which he did. At that time he was at the wheel, about six feet behind me. I was looking out the front window of the wheelhouse. He could see distinctly whether I was asleep or awake.

Ans. to ninth interrogatory, he saith: Wm. Robertson was also present when Byrne made the statement in Mann & Parsons' office, and Robertson also made a statement that he reported a vessel on the starboard bow, and that I answered him; also, that he heard me tell the man at the wheel to starboard his helm. Afterwards saw the schooner change her course. He further stated our vessel kept off to the eastward before we struck; stated that I hailed the schooner to starboard his wheel, and that if he had done so would have gone clear; stated, further, the collision happened through the

62 schooner's fault in changing her course. I considered that Wm. Robinson gave a fair statement of the facts.

Ans. to tenth interrogatory, he saith: The schooner did change her course before the collision. If she had not done so, the vessels would have gone clear of each other.

Ans. to eleventh interrogatory, he saith: The bell was rung and the engine stopped the moment we saw the vessel bearing down upon us, but her way could not be stopped so as to prevent the collision.

Ans. to twelfth interrogatory, he saith: The schooner showed no lights whatever. I have always known that all sailing vessels should carry lights in Chesapeake bay. During our passage down the bay that night we passed at least fifteen sailing vessels, all with lights, and none but the schooner A. S. Bedell without a light.

Ans. to last interrogatory, he saith: I know nothing more that would have a material bearing on the case.

63 To the first cross-interrogatory he saith: Yes; I have received two letters from H. B. Cromwell & Co., one dated

Oct. 17th, 1864, and one dated July 6th, 1864, both of which are annexed. I have also received from Messrs. Mann & Parsons a copy of a statement I formerly made in their office of the circumstances connected with collision; also, a statement made by William Robinson in the office of Mann & Parsons; also, a statement made by John Byrne at the same time and place, all which are annexed.

To the second cross-interrogatory he saith: I have received none other but those mentioned in answer to interrogatory first.

To the third interrogatory he saith: I have not looked at any other memorandum or paper bearing on the case except those mentioned in answer to the first and second interrogatories, all of which are annexed.

To the fourth cross-interrogatory he saith: I had a conversation with Mr. John Baird, chief engineer of Cromwell's steamship line. There was no one else present, that I remember, and I have stated all the conversation I had with him, to the best of my recollec-
64 tion. This conversation with Mr. Baird occurred, to the best of my recollection, on the 9th of July, 1859, on board the steamer "Potomac."

To the fifth cross-interrogatory he saith: No; I never was.

To the seventh cross-interrogatory he saith: Captain Watson rang the bell after the schooner was discovered.

To the seventh cross-interrogatory he saith: On the forward part of the forehatch; I remarked to Capt. Watson that the schooner was changing her course.

To the eighth cross-interrogatory he saith: It would take about five minutes to stop the headway of the "Potomac" if there was a good head of steam to back the engine. The distance run would depend upon the rate of speed she was going at the time the order was given to stop her.

To the ninth cross-interrogatory he saith: I have been there several times since the collision, but I do not recollect how many.
65 To the tenth cross-interrogatory he saith: I was the officer of the watch from the time the schooner was seen to the collision; but whenever the captain comes on deck he takes command.

To the eleventh cross-interrogatory he saith: If the schooner had not changed her course she would have passed the Potomac one hundred yards on the starboard beam.

To the last cross-interrogatory he saith: I know of nothing more but I have already stated in the case.

JOHN P. FOOTE.

Examination taken, reduced to writing, and by the witness subscribed and sworn this 14th day of November, 1864, before me.

JAMES PRATHER,
*Commissioner, A. V. Lieut. U. S. Navy,*
*Com'd'g U. S. St'm'r "Mount Vernon."*

66 Endorsed: Deposition of John P. Foote.

67 United States District Court for the southern district of New York.

Interrogatories to be administered to Stone, in the city of Norfolk, in the State of Virginia, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States for the southern district of New York, wherein Mott Bedell is libellant against the steamer Potomac, her tackle, apparel, and furniture, and Henry B. Cromwell, Joseph Noble, Barnabas Hammet, and Asa Packer, Samuel D. Babcock as trustees, and Daniel Cromwell, jr., and Ann W. Cromwell, as administrators of all and singular the goods, chattels, and credits which were of William D. Cromwell, deceased, are claimants, on the part and behalf of the claimants, before the commissioner in the writ hereto annexed named.

First interrogatory. What is your name, age, place of residence, and occupation, and what was your place of residence and occupation in the month of July, 1859?

Second interrogatory. Do you know the libellant or either of the claimants herein; and if so, which of them?

68 Third interrogatory. In the said month of July, 1859, did you at any time see the captain of the schooner A. V. Bedell; and if so, when and where, and under what circumstances, did you first see him? If you shall say you first saw him at Norfolk, in the State of Virginia, state exactly when you so saw him, whence and how did he come to Norfolk, and state his name, if you remember it.

Fourth interrogatory. Did you in said month, and if so, when and where, (specifying the exact place,) have any conversation with or hear anything said by him in reference to a collision between the schooner A. V. Bedell and said steamer Potomac? If yea, state the same fully, and also state what led to any such conversation.

Fifth interrogatory. Do you know of any other matter or thing material to or necessary or that may tend to the benefit and advantage of the claimants in this canse? If yea, state the same fully and particularly, as if you were thereunto specially interrogated.

Settled, subject to all legal objec'ns and excep'ns.

BENEDICT, BURR & BENEDICT,
*For Libell'ts.*

69 Endorsed: U. S. District Court. Mott Bedell *vs.* The steamer Potomac. Interrogatories to be administered to Stone, of Norfolk. Mann & Parsons, claimants' proctors, 64 Wall street.

70

71 United States District Court for the northern district of New York.

Cross-interrogatories to be administered to Stone, of the city of Norfolk, in the State of Virginia, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, and pending in the District Court of the United States in and for the southern district of New York, wherein Mott Bedell is libellant against the steamer Potomac, her tackle, apparel, and furniture, and Henry A. Cromwell, Joseph Noble, Barnabas Hammet and Asa Packer, Samuel D. Babcock as trustees, and Daniel Cromwell, jr., and Ann W. Cromwell, as administrators of all and singular the goods, chattels, and credits whic hwere of William D. Cromwell, deceased, are claimants, on the part of the claimants, before the commissioner in the writ hereto annexed named.

First cross-interrogatory. If you say you saw the master of the schooner A. F. Bedell in Norfolk, Virginia, in June, 1859, now state where in Norfolk you then saw him. Did you see him more than once? Did you have more than one interview or conversation with him respecting a collision between the schooner A. F. Bedell
72 and the steamer "Potomac?" If so, how many, and when and where was such conversations?

Second cross-interrogatory. Name all the persons present at such conversations, and at each of them, if there were more than one.

Third cross-interrogotary. State how long such conversations occupied respectively.

Fourth cross-interrogatory. State whether you have, in answer to the fourth direct interrogatory, stated all that took place in such conversation. Have you given the exact words then used, and all of them? Do you recollect all that was then said? do you recollect any of the exact words then used? If so, now state what exact words were then used by said captain.

Fifth cross-interrogatory. Have you at any time given to any person any letter or writing, saying what you heard said captain say? If so, state for whom such letter or writing was made. Whereis it now? when did you last see it, or a copy of it? have you any copy of it? Does said letter or writing, if there be any such, contain all that you have in this examination stated to have taken place in said conversation? Does said letter or writing, if there be any such, con-
73 tain other statements respecting said conversation, which you have not given in this examination?

Sixth cross-interrogatory. Has the said master at any time explained or attempted to explain said conversation to you? Has he not said to you that you misunderstood him, or that you did not give said conversation correctly, or to that effect?

Seventh cross-interrogatory. Have you, in answer to the fourth interrogatory, stated all that you know of the matters inquired of therein? If not, now state what else you know of the matter inquired of therein.

Eighth cross-interrogatory. Have you, to enable you to answer any interrogatory, looked at any writing or memorandum? If so, state which answers you have given after looking at some paper, writing, or memorandum.

Ninth cross-interrogatory. If you have looked at any paper, writing, or memorandum to enable you to answer any question propounded to you, now state what paper, writing, or memorandum you so looked at, and annex the same to your answer hereto.

Tenth cross-interrogatory. If you have looked at any paper,
74 writing, or memorandum, in order to be able to answer any question propounded to you, now state who made such paper, writing, or memorandum, and where did you obtain it.

Eleventh cross-interrogatory. Who has been present during the giving of your answers on this commission? Name all persons.

Twelfth cross-interrogatory. Has any person, at any time during the execution of this commission, made any suggestion to you as to your answers or any of them, or asked you any other question than those herein written? If so, state who such person was, and what, if any other questions than those herein written, were put to you.

Thirteenth cross-interrogatory. If you state that any person has made any suggestion to you as to your answer to any question herein propounded, now state what question you answered according to such suggestion.

Fourteenth cross-interrogatory. Have you received from any person or persons, at any time, any letter or any written communication respecting this commission, or the execution thereof, or the answers to be given to any questions therein propounded? If so, annex such letters, or a copy thereof, to your answer.

75 Fifteenth cross-interrogatory. If, according to the direction in the preceding interrogatory, you have annexed any copies of papers instead of originals, state why you did not annex the originals; how you know said copies to be true copies, and where the originals thereof are.

Sixteenth cross-interrogatory. Do you know any other matter or thing that would be of benefit or advantage to the libellants in this cause? If so, state the same as fully and particularly as if you were specially interrogated thereto.

BENEDICT, BURR & BENEDICT,
*Lib'ts Proctors.*

Settled, subject to all legal objections and exceptions.

MAN & PARSONS,
*Cl'm'ts' Pro's.*

Endorsed: U. S. district court, southern district of New York.
Mott Bedell *vs.* The steamer Potomac, her tackle, &c. Com-
76 mission. The execution of this commission appears in certain schedules hereto annexed. Rich'd H. Baker, commissioner.

77 STATE OF VIRGINIA, *City of Norfolk, to wit:*

The deposition of George F. Stone, produced, sworn, and examined the 25th day of January, 1861, at the city of Norfolk, in the State of Virginia, under and by virtue of a commission hereto annexed, issued out of the District Court of the United States for the southern district of New York, in a certain cause therein depending, and at issue between Mott Bedell, libellant, against the steamer Potomac, her tackle, &c., Henry B. Cromwell and others, claimants, as follows :

George F. Stone, of the city of Norfolk aforesaid, mechanic, aged thirty years, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the claimants, doth depose and say as follows, to wit:

First. To the first interrogatory he saith: My name is George F. Stone; I am thirty years old; Norfolk, Virginia, is my present residence; I am a mechanic by trade. In the year 1859 I resided in Norfolk; I was then a merchant and a notary public.

Second. To the second interrogatory he saith: I know the libellant, Mott Bedell, and one of the claimants, H. B. Cromwell.

Third. To the third interrogatory he saith: I did in the
78 month of July, 1850, see the capt. of the schooner A. V. Bedell in my office, in the city of Norfolk, for the purpose of noting his protest. He was brought to Norfolk in the steamer Potomac, having abandoned his vessel in the Chesapeake bay. I do not rem'ber his first or Christian name, but I know his family name is Ryder.

Fourth. To the fourth interrogatory he saith: In July, 1859, I did have a conversation with Capt. Ryder in my office, in Norfolk city. The conversation was in reference to the collision between the schooner A. V. Bedell and steamer "Potomac." Capt. Ryder said that he was making for what he supposed to be the Rappahannock light, which was ahead, and did not see any steamer or light of any steamer, a cloud of fog having hid the light, as he supposed, until the steamer was so close to him that it was impossible to clear her; but he altered his course to clear her, but could not; that the light he had supposed to be the Rappahannock light must have been and was the light of the steamer. My inquiries as notary public, in order to note his protest, led to this conversation. In this conversation he (the capt.) said he had no light but his binnacle light, and that the steamer had all the lights required by law.

Fifth. To the fifth interrogatory he saith: I do not know of
79 any other fact or circumstance material to the interest or advantage of the claimants in this cause further than this: The captain of the steamer, as I have said before, admitted that he was showing no light on the night of the collision except his binnacle light, and that it had been his custom theretofore to carry his light on his mainmast; and whilst Captain Ryder did not, in so many words, admit the schooner to have been in fault, the conclusion necessarily drawn from the conversations of both captain and the crews of both

vessels, all of whom I interrogated, was that the collision was occasioned by the captain of the schooner mistaking the light of the steamer for that of the Rappahannock light-vessel, and steering directly for it until it was too late to avoid the collision. It was admitted by all parties that the steamer rung her bells and reversed her engines as soon as she discovered the schooner, but was too late for a collision to be avoided.

*Answer to cross-interrogatories.*

First. To first cross-interrogatory he saith: I saw the master of the schooner A. V. Bedell, not in June last but in July, 1859, I believe, in Norfolk, Virginia. I saw him repeatedly, he was in my office repeatedly during several days. I had but one conversation with him on the subject of the collision before noting his protest, but several afterwards on the day of taking his protest and on subsequent
80 days. I don't recollect the number of conversations, but there were several, and all in my office.

Second. To the second cross-interrogatory he saith: My then partner, James Baymore, the clerk, F. B. Wilburn, with portions of the crews of the schooner and steamer (I cannot say who, or how many, were present at one or more of the conversations, as well as I recollect; but I cannot say to what extent they were attending to the conversation or conversations.

Third. To the third cross-interrogatory he saith: The conversations lasted respectively fifteen or twenty minutes each,

Fourth. To the fourth cross-interrogatory he saith: Yes; as far as I can recollect I have given the exact words then used, to the best of my knowledge; I think I recollect substantially all that was then said; so far as I recollect, I have given the exact words used by the said captain in my answer to the fourth direct interrogatory.

Fifth. To the fifth cross-interrogatory he saith: To the best of my recollection I have written no letter or other writing concerning the said conversations or collision.

Sixth. To the sixth cross-interrogatory he saith: The said
81 master has several times attempted to explain to me the said conversations, he has sometimes reiterated the same conversation, and at other times has differed from the statements as first made to me at the time of my taking his protest; he has intimated to me that I did not give said conversation exactly, but I am sure I have reported him accurately.

Seventh. To the seventh cross-interrogatory he saith: I have in answer to the fourth direct interrogatory said all I know respecting the matter enquired of therein.

Eighth. To the eighth cross-interrogatory he saith: I have not looked at any writing or memorandum to enable me to answer any question in this matter.

Ninth. To the ninth cross-interrogatory he saith: I have said I have neither looked at nor examined any memorandum or writing to enable me to answer any question in this cause.

Tenth. To the tenth cross interrogatory he saith: Having stated

that I have no memorandum or writing, I can give no further answer to the question.

Eleventh. To the eleventh cross-interrogatory he saith: No one but the commissioner and a law student in his office have been
82 present during the taking of this deposition. Captain P. P. Crowell was present a few moments at the commencement of the deposition, but soon left.

Twelfth. To the twelfth cross-interrogatory he saith: No one has, during the examination of this commission, made any suggestion as to any answers to these interrogatories, nor has any other interrogatory been propounded to me.

Thirteenth. To the thirteenth cross-interrogatory he saith: No such suggestion having been made, and no such question having been propounded, I can make no further answer to this interrogatory.

Fourteenth. To the fourteenth cross-interrogatory he saith: None at all.

Fifteenth. To the fifteenth cross-interrogatory he saith: Having received no letter or communication touching the subject, I can give no answer to this interrogatory.

Sixteenth. To the sixteenth cross-interrogatory he saith: I do not know of any other matter or thing that would be of advantage to the libellants in this cause. And further this deponent saith not.

GEORGE F. STONE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twenty-fifth day of January, 1861,
83 before me; and in testimony whereof I have hereunto set my hand as commissioner, as aforesaid.

RICH'D H. BAKER, JR.,
*Commissioner.*

Commissioners fees $20; paid by the claimants.

R. H. B. JR.

Endorsed: U. S. District Court. Mott Bedell *vs.* Steamer Potomac, her tackle, &c. Rich'd H. Baker, Jr., commissioner. George F. Stone. Witness, George F. Stone. To Man & Parsons, esqs., counsellors at law, No. 64 Wall street, New York.

84

85 United States District court for the southern district of New York.

Interrogatories to be administered to James Baymore, of New Orleans, in the State of Louisiana, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States in and for the southern district of New York, wherein Mott Bedell is libellant against the steamer Potomac, her tackle, apparel, and furniture, and Henry

B. Cromwell, Joseph Noble, Barnabas Hammet, and Asa Packer, Samuel D. Babcock as trustees, and Daniel Cromwell, jr., and Ann W. Cromwell, as administrators of all and singular the goods, chattels, and credits which were of William D. Cromwell, deceased, are claimants on the part and behalf of the claimants, before the commissioner in the writ hereto annexed, named.

First interrogatory. What is your name, age, place of residence, and occupation, and what your place of residence and occupation in the month of July, 1859?

Second interrogatory. Do you know the libellant or either of the claimants herein, and if so, which of them?

86 Third interrogatory. In the said month of July, 1859, did you at any time see the captain of the schooner A. V. Bedell; and if so, where and when, and under what circumstances did you first see him? If you shall say you first saw him at Norfolk, in the State of Virginia, state where exactly you so saw him, whence and how did he come to Norfolk, and state his name if you remember it.

Fourth interrogatory. Did you in said month, and if so, when and where, (specifying the exact place,) have any conversation with or hear anything said by him in reference to a collision between the schooner A. V. Bedell and said steamer "Potomac"? If yea, state the same fully, and also state what led to any such conversation.

Fifth interrogatory. Do you know of any other matter or thing material or necessary, or that may tend to the benefit or advantage of the claimants in this cause; if yea, state the same as fully and particularly as if you were thereto specially interrogated.

Settled, subject to all legal objections and excep's.

BENEDICT, BURR & BENEDICT,
*P'r for Libel't.*

87 Endorsed: U. S. District Court, southern district of New York. Mott Bedell *vs.* The steamer Potomac. Interrogatories. Man & Parsons, claimants' proctors.

88

89 United States District Court for the southern district of New York.

Cross-interrogatories to be administered to James Baymore, of New Orleans, in the State of Louisiana, a witness to be produced, sworn, and examined in a certain cause of admiralty jurisdiction, now pending in the District Court of the United States in and for the southern district of New York, wherein Mott Bedell is libellant against the steamer Potomac, her tackle, apparel, and furniture, and Henry B. Cromwell, Joseph Noble, Barnabas Hammett, and Asa Packer, Samuel D. Babcock as trustees, and Daniel Cromwell, jr., Andrew W. Cromwell, as administrators of all and singular the goods, chattels, and credits which were of William D.

Cromwell, deceased, are claimants, on the part of the claimants, before the commissioners in the writ hereto annexed named.

First cross-interrogatory. If you say you saw the master of the schooner A. V. Bedell in Norfolk, Virginia, in June, 1850, now state where, in Norfolk, you then saw him. Did you see him more than once? Did you have more than one conversation with him respecting a collision between the schooner A. V. Bedell and the steamer Potomac? If so, how many, and when and where was such conversation?

90 Second cross-interrogatory. Name all the persons present at such conversation, and at each of them, if there were more than one.

Third cross-interrogatory. State how long such conversations occupied respectively.

Fourth cross-interrogatory. State whether you have, in answer to the 4th direct interrogatory, stated all that took place in such conversation. Have you given the exact words then used, and all of them? Do you recollect all that was then said? Do you recollect any of the exact words then used? If so, now state what exact words were then used by said captain.

Fifth cross-interrogatory. Have you at any time given to any person any letter or writing, saying what you heard said captain say? If so, state from how such letter or writing was made. When did you last see it, or a copy of it? Have you any copy of it? Does said letter or writing, if there be any such, contain all that you have on this examination stated to have taken place in said conversation? Does said letter or writing, if there have been any such, contain other statements respecting said conversation which you have not given on this examination?

91 Sixth cross-interrogatory. Has the said master, at any time, explained, or attempted to explain, said conversation to you? Has he not said to you that you misunderstood him, or that you did not give said conversations correctly, or to that effect?

Seventh cross-interrogatory. Have you, in answer to the fourth interrogatory, stated all that you know of the matters enquired of therein? If not, now state what else you know of the matters enquired of therein.

Eighth cross-interrogatory. Have you, to enable you to answer any interrogatory, looked at any writing or memorandum? If so, state which answers you have made, after looking at some paper, writing, or memorandum.

Ninth cross-interrogatory. If you have looked at any paper, writing, or memorandum, to enable you to answer any question propounded to you, now state what paper, writing, or memoranda you so looked at, and annex the same to your answer hereto.

Tenth cross-interrogatory. If you have looked at any paper, writing, or memorandum, in order to enable you to answer

92 any question herein propounded to you, now state who made such paper, writing, or memorandum. When and where did you obtain it?

Eleventh cross-interrogatory. Who has been present during the giving of your answers on this commission? Name all the persons.

Twelfth cross-interrogatory. Has any person, at any time during the execution of this commission, made any suggestions to you as to your answers, or any of them, or asked you any other questions than those herein written? If so, state who such person was, and what, if any, other question than those herein written were put to you.

Thirteenth cross-interrogatory. If you state that any person has made any suggestion to you as to your answer to any question herein propounded, now state what question you answered according to such suggestion.

Fourteenth cross interrogatory. Have you received from any person or persons, at any time, any letters or any written communication respecting this commission, or the execution thereof, or the answers to be given to any questions therein propounded? If so, annex such letters, or a copy thereof, to your answer.

Fifteenth cross-interrogatory. If, according to the direction
93 in the preceding interrogatory, you have annexed any copies of papers instead of originals, state why you did not annex the originals, how you know such copies to be true copies, and where the originals thereof are.

Sixteenth cross-interrogatory. Do you know any other matter or thing which might be of interest or advantage to the libellant herein? If so, state the same as fully and particularly as if you had been specially interrogated thereto.

BENEDICT, BURR & BENEDICT,
*Lib'ts Proct's.*

Settled, subject to legal objections and exceptions.
MANN & PARSONS, *Cl'm't Pr's.*

Endorsed: U. S. District Court, southern district of New York. Mott Bedell *vs.* The steamer Potomac, her tackle, &c. Commission.

94 Depositions of witnesses produced, sworn, and examined this 28th day of January, in the year one thousand eight hundred and sixty-one, at the office of Race & Foster, at the corner of Camp street and Commercial Place, in the city of New Orleans, under and by virtue of a commission issued out of the District Court of the United States for the southern district of New York, in a certain cause therein pending and at issue between Mott Bedell, libellant, against the steamer Potomac, her tackle, &c., Henry B. Cromwell and others, claimants, as follows:

James Baymore, of New Orleans, aged fifty years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the claimants herein, doth depose and say as follows:

To the first interrogatory he saith: My name is James Baymore; my age is 54; by occupation I am a merchant; my residence is New Orleans, in the State of Louisiana. In July, 1859, my place of resi-

dence was Norfolk, Virginia, and my occupation was then that of a merchant.

To the second interrogatory he saith: I know the libellants; and of the claimants I know Henry B. Cromwell only.

95 To the third interrogatory he saith: I did see the captain of the schooner A. V. Bedell, in July, 1859. I first saw him after the collision on board of the steamer Potomac, as she came to the wharf at Norfolk, Virginia. I was standing on the wharf as the Potomac came to the wharf. I saw him, as stated, on the Potomac, on which he had come to Norfolk from up the Chesapeake, where the schooner A. V. Bedell had been run into by the Potomac. I don't recollect his name.

To the fourth interrogatory he saith: I spoke to the captain of the schooner as he came ashore from the steamer Potomac, who told me he wanted to go to the telegraph office, and I told him I would go there with him; and during our walk together from the wharf, where the Potomac had landed, to the telegraph office, in the upper end of Norfolk, corner of Main and New Castle streets, we had a conversation together about the collision between the steamer Potomac and the schooner A. V. Bedell, in which he told me all about the collision. He stated that "last night, about 11 o'clock, going up the Chesapeake Bay, near off the mouth of the Rappahannock, he made a steamer's light ahead, when he told the [the] man at the wheel to keep the lights open, and keep her off two or three points to the

96 eastward. He very soon made the steamer's hull right ahead. He hard up his helm to go round her stern, as he supposed, thinking the steamer to be heading to the southward and westward. He mistook the lights on her bow, and thought they were on her stern. They very soon came together, which caused the schooner to sink in a very short time."

To the fifth interrogatory he saith: I know nothing further of benefit to the claimants.

97 To the first cross-interrogatory he saith: Whether it was in June or July, 1859, that the conversation given above was had, I cannot state particularly. I had several conversations with him, besides that mentioned on our way to the telegraph office. I recollect one at the notary's office, which was about the collision: it was at the time of his making his protest; but I do not recollect the language used further than I have stated in my answers to interrogatories-in-chief. I had several conversations with him by ourselves in the streets, but which principally referred to the raising the schooner, and in answer to my inquiry how he was coming on in getting her up.

To the second cross-interrogatory he saith: No one was present on our first conversation on our way to the telegraph office. At the conversation at the notary's I do not recollect that any one was present except the notary public, Geo. F. Stone. No one was present at any other conversations we had, that I recollect of.

To the third cross-interrogatory he saith: The first conversation was of about 10 minutes duration from the wharf to the tele-

98 graph office, and from there was continued as we walked down from the telegraph office to the notary's, which was for about 10 minutes longer; but our conversation was then of a more general character, as between seafaring men about vessels, collisions, &c. I cannot recollect all that was said. In the notary's office we had but very little conversation; don't recollect how much time was occupied therein.

To the fourth cross-interrogatory he saith: I have stated in my answer to the 4th direct interrogatory all that I have any knowledge of as having taken place on that conversation. I have given the exact words, and all of them, so far as I know. I do not recollect anything more. I do recollect the exact words as I have given them in my answer; so far as I know the exact words used by the captain are those given in my answer in chief.

To the fifth cross-interrogatory he saith: I have never given any writing or letter of what I heard the captain of the schooner "A. V. Bedell" say to any person.

To the sixth cross-interrogatory he saith: I have had conversation since with the captain about our conversations; but I don't
99 recollect that he has ever given any explanation, or attempted to give any of the same. Don't recollect that he ever said that I had misunderstood him, or that I had not given his conversation correctly, nor anything to that effect.

To the seventh cross-interrogatory he saith: In my answer to the 4th interrogatory I have stated all that I know of the matters enquired of therein.

To the eighth cross-interrogatory he saith: I have not looked at any paper or memorandum to enable me to answer the interrogatories propounded.

To the ninth cross-interrogatory he saith: I have not looked at any.

To the tenth cross-interrogatory he saith: I looked at none; had none furnished.

To the eleventh cross-interrogatory he saith: The commissioner, Mr. Foster, and three gentlemen in the office of Race & Foster, when I gave my answer to this commission, were present during the same. The names of the three gentlemen I do not know, except as I learn them from the commissioners to be Mr. Preston and Mr. Whittington and Mr. Patis, with neither of whom have I had conversation.

To the twelfth and thirteenth cross-interrogatories he saith:
100 No one has made any suggestions or asked other questions than those written in commission and propounded by the commissioner.

To the fourteenth cross-interrogatory he saith: I received a letter from Mr. Cromwell, the substance of which was as to my place of residence and where I could be found, so that my testimony could be taken in this cause, and all that it contained, and asking no questions further than as to whether I was permanently stationed here, so that my testimony could be taken when called on. I have neither a copy nor original present, and don't now know where the original is.

To the fifteenth cross-interrogatory he saith: I have no originals or copies.

To the sixteenth cross-interrogatory he saith: I know not.

JAMES BAYMORE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 28th day of January, 1861, before me.

W. H. FOSTER, *Commissioner*.

Endorsed: Deposition of James Baymore.

101 UNITED STATES OF AMERICA,

*Southern District of New York,*

*City, County, and State of New York ss:*

Be it remembered, that on this 24th day of December, in the year of our Lord one thousand eight hundred and sixty-three, I, Charles W. Newton, a commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, William Robertson, to testify and the truth to say, on the part and behalf of the libellant, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States, for the southern district of New York, wherein Mott Bedell is libellant and the steamer Potomac is respondent.

And the said William Robertson being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William Robertson, and he did thereupon depose, testify, and say as follows, viz:

I am a sea-faring man and am about to proceed on a voyage to sea. I am a Swede. I was before the mast in the Potomac at the time of the collision with the schooner Bedell. There were four men on the steamer Potomac at the time of the collision; their names were John Byrne, John Pendergrast, I was one, and one whose name I
102 don't remember; we left Baltimore in the afternoon; my watch below was eight o'clock, and at twelve o'clock our watch came on deck; John Byrne was in my watch, which was the captain's watch, and the second mate in. The second mate took charge of the deck when I came on; when I came on deck I went on the lookout and the other man, John Byrne, went to the wheel; there was two men in my watch; I stood forward on the lookout, at the ice box; I

had but to keep on the lookout, I done nothing else; I saw a vessel about right ahead about quarter past twelve; it was a little later, perhaps; when I saw the vessel ahead, I reported to the second mate; he sat in the wheel-house when I reported her; he answered me, keep a good lookout; I done nothing else after that.

Q. Why not?

(Objected to, Mr. Parsons, for claimant.)

A. Nothing else than I was on the lookout again; I saw the vessel come up about half a point to the windward and thought we were clear of her. I can't tell whether the schooner altered her
103 course any; the course of our vessel was not altered any; our vessel was not slowed any, we had full steam on then; they came right down to us. The captain of the schooner commenced to sing out; then the second mate came out of the wheel-house and sung out to the schooner, put the helm the other way; he told the man at our wheel to put the helm a-starboard; this was a little before we struck; it was not far off, because we could hear them sing out from the schooner; I sung out to the man at our wheel to ring the bell to stop the engine; he didn't understand me, and then ran myself to the wheel-house to strike the bell and met the captain at the door; he was just ahead of me and he struck the bell; the captain came from his room; the second mate had left the wheel-house before the bell rung, and just the same moment the bell rung we struck them; the time the captain rang the bell was the first time it was struck from the time I reported the vessel to the time the second mate left the wheel-house, as above stated; he was in the wheel-house all the time; he was sitting on the bench in the corner, on the starboard side, with his back to the bow of the vessel; he did not say or do anything from the time I reported the vessel up to the time
104 the schooner hailed.

Q. Would there have been any difficulty in your avoiding the schooner if the second mate had attended to the navigation of the steamer after you reported the vessel?

(Objected by claimants' counsel.)

A. There was plenty time enough to be clear of the vessel; there was nothing in the way to have prevented our going clear on either side of her; I speak the English language quite imperfectly and hard to make people understand me sometimes.

*Cross-examined.*

By Mr. Parsons, counsel for claimants:

Q. How long have you been in this country?

A. I have been sailing from New York eight years.

Q. In American vessels?

A. Yes, all the time.

Q. Before you came here, did you sail in English vessels? if so, how long a time?

A. For six or seven months.

Q. How long had you been in the line to which the Potomac belonged before the collision with the Bedell?

A. Less than a year.

Q. Are you not mistaken; had you not been there for three years?

A. No sir; I had been in the employ of the line sometime
105 before and then made three or four trips; I don't remember how many.

Q. Who requested you to come here to-day to be examined as a witness?

A. Mr. Bedell.

Q. How long have you known Mr. Bedell?

A. Some two weeks, I believe.

Q. Where did you become acquainted with him?

A. We came together over on the East river, at his office. A man went aboard the ship and told me Mr. Bedell wanted to see me. I didn't know what it was, and I went to his office.

Q. How often have you seen him since?

A. I saw him Monday; after that I saw him yesterday.

Q. What was the name of the second mate of the Potomac?

A. His name is John Foot.

Q. When have you last seen him?

A. It is a long time; I saw him once after he left the boat.

Q. Have you ever had any disagreement with him?

A. No; I can't swear I ever had any cross words with him on board of ship; he was good friends with me when I last saw him as can be.

Q. Did you have any trouble with any one on the line?

A. No, sir.

Q. Why did you leave the line?

A. I can't tell that; some vessels I stay one trip and some two; I leave because I like to leave.

Q. Did you not call with Captain Watson, Mr. Foot, Mr.
106 Beal, the first mate, and John Byrne, at the office of Mann & Parsons, 64 Wall street, when your vessel reached New York, next after the collision?

A. Yes, sir, I was up there; I don't know what number it is.

Q. Did you not, in the presence of those parties, make a statement to me about the collision?

A. Yes, sir; I told you about it at the time how it was.

Q. Did you not at that time say that the collision happened in consequence of the fault of the schooner in changing her course?

A. No, sir; I did not say so; I could not say that the schooner changed her course.

Q. When you first saw the schooner, how far forward were you standing?

A. I stood forward of the forehatch, alongside of the ice-boat.

Q. How far from the stern of the vessel?

A. The topgallant forecastle in Cromwell's boat was lower down than the main deck; and I stood on the main deck, where the lookout always stands.

Q. When you first saw the schooner, was she not a little on your starboard bow?

A. When I first saw her she was about right ahead, a little on the starboard bow, about half a point.

Q. Did you not hail Mr. Foot, 'Vessel ahead on the starboard bow?''

A. Yes, I reported a vessel ahead; that was the word I used.

107 Q. Were not yonr words to this effect, "Vessel ahead on the starboard bow?''

A. No, sir; I did not report it so; I say vessel ahead.

Q. Did Mr. Foot ask you where the vessel was?

A. No, sir, he answered, "Keep a good lookout."

Q. Did you not, when so at the office of Man & Parsons, state that your hail to Mr. Foot was, "Vessel ahead on the starboard bow?''

A. No, sir; I used the same words at your office I use here.

Q. Did you not hear Mr. Foot tell the man at the wheel to starboard his helm as soon as you reported vessel ahead?

A. No, sir; I did not hear that till the captain of the schooner sung out.

Q. Did you not say on the occasion at Man & Parson's office, that as soon as you reported vessel ahead, you heard Mr. Foot tell the man at the wheel to starboard his helm?

A. No, sir; I did not say so.

Q. Did you not on that occasion say that you saw the schooner change her course?

A. No, sir; I could tell whether she changed her course or not.

Q. Did you not also on that occasion say that if the schooner had starboarded her helm when Mr. Foot hailed her, that the schooner would have gone clear?

A. No, sir; no, I never said so.

Q. When were you last at sea?

A. Two weeks ago I was on the Fulton.

Q. Have you shipped since?

A. No, sir.

Q. When are you going to leave New York?

A. I can't tell. I am not well yet.

108 Q. You have no present intention of leaving New York?

A. No, sir; as soon as I am well I will go right off.

Q. Was the front of the wheel-house boarded up, and if so, how high; I mean on the Potomac?

A. It is boarded up I should think about three feet; I can't tell exactly.

Q. Did you go at once to the lookout when you came on deck at 12 o,clock?

A. Yes, sir.

Q. Did you not stop at the wheel-house?

A. No, sir; I went from the forecastle right to the lookout.

Q. How far did you stand from the wheel-house?

A. I can't tell how many feet.

Q. Can you give any idea of the number of feet?

A. No, sir.

Q. Was it as much as fifty feet?

A. I can't tell about that.

Q. Was it as much as a hundred feet?

A. It is enough to say I can't tell how much it is. It can't be a hundred feet.

*Re-direct examined.*

I have steered the vessel often and she steers easy.

WILLIAM ROBINSON.

109 UNITED STATES OF AMERICA:

SOUTHERN DISTRICT OF NEW YORK,

*City, County, and State of New York, ss:*

Be it remembered, that on this 30th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-three, I, Charles W. Newton, a commissioner, duly appointed by the Circuit Court of the United States for the Southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Byrne, to testify and the truth to say, on the part and behalf of the libellant, in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the southern district of New York, wherein Mott Bedell is libellant and the steamship Potomac respondent. And the said John Byrne being about the age of 34 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Byrne and he did thereupon depose, testify, and say as follows, viz:

I am a sea-faring man and not exactly going to sea at present. I reside in Baltimore, Maryland. I am going to Baltimore as soon as I am examined in this case. I have been a sea-faring man 18 or 20 years. I was before the mast on the Potomac at the time of the collision with the Bedell. I was in the captain's watch. I came on deck at 12 o'clock, or a few minutes after I was called at. I went to the pilot-house to relieve the man at the wheel, and I staid at the wheel until the collision. I heard vessel reported. The second mate was asleep at that time in the pilot-house, lying on his arms in the corner. Mr. Foot, the second mate, was the officer in charge of the deck at that time. After the vessel was reported I did not hear any other hails. I heard sometime after the vessel was reported from the schooner the schooner was on the starboard bow. When I seen her she was then about a quarter of a mile off, as near

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as I could judge. I should say she was somewhere between half a point and a point on the starboard bow. She was not a point on the starboard bow; at the time our vessel was going between 9 and 10 knots as the vessel was reported. Ten knots is about her usual speed.

112 Our vessel was not stopped at the time of the collision; the bell had rung, but she had not stopped. The captain rung the bell. He rang the bell when he came into the pilot-house before that. I heard notice given from the man on the lookout to stop her. I did not do it then. I had no orders from the second mate to do it. The second mate was in the pilot-house at the time, the time the man sung out.

Q. Was there anything to prevent her being stopped at the time the man sung out to stop her?

(Ob'j. to by Mr. Parsons, counsel for claimant.)

A. No, sir; there was nothing to prevent her to be rang to be stopped.

Q. If she had been stopped, would it have avoided the collision?

A. Yes, sir; if she had been stopped and backed it would have avoided the collision. (Objected.) I did not see anything to prevent the Potomac passing her on either side.

*Cross-examined*

By Mr. Parsons, counsel for claimant:

Q. Where in Baltimore do you live?

113 A. 88 Granly st. I have lived there five or six years; I have a family there; I came on to the city of New York the day before yesterday; I came on purpose to be examined as a witness in this case, at Capt. Bedell's request by a letter; I have not got the letter with me; I left it in Baltimore; by Capt. Bedell, I mean the libellant; I have known Capt. Bedell about five years; I have known him pretty well; I have seen him often during that time; I became acquainted with him after the collision, about a month after the collision, it might have been more than a month; I became acquainted with him at his residence; I went there to tell him about this collision. He had never requested me nor any one else; he had never seeked for me, but I did for him.

Q. Have you ever received money from Mr. Bedell?

A. No, sir; only he paid my passage and expenses on here; he paid me for my passage and expenses ten dollars.

114 Q. When was it first understood between you and Captain Bedell, that you should be a witness in this cause?

A. When I saw the gentleman first, he said he wished I would be a witness in this cause, and I gave him my address in Baltimore.

Q. At what time do you say the collision took place exactly?

A. Half past twelve o'clock at night.

Q. Did Mr. Foot go on deck at the time you did? Did he take charge of the watch at that time?

A. I came into the pilot-house after I had charge of the wheel.

Q. Up to what time do you say he was asleep in the pilot-house?

A. Up to the time the man sung out, vessel ahead, and that roused him up.

Q. How long was that before the vessels struck?

115 A. Five or six minutes good, I should say; all of that.

Q. Had you seen the schooner before the lookout hailed the vessel ahead?

A. No, sir; I did not see the schooner until I got my helm hard a-starboard.

Q. Do you remember a few days after the collision, coming to the office of Mann & Parsons, 64 Wall st., with Captain Watson, Mr. Foot, Mr. Beal, the first mate, and William Robertson?

A. I remember going to two offices at that time, at one of which I made a statement; I was not sworn to it, but it was the truth the same as I have said here.

Q. Don't you remember that at the office at which you made your statement, you saw me, (Mr. Parsons,) and that I took down, in wriing, the statement that you made?

A. No, sir; I remember giving a statement to some person, but I don't think it was you.

Q. Do you remember who were present when you made such statement?

116 A. There was the captain, the mate, 2d mate, and me, and the man at the lookout.

Q. Did not the person to whom you made your statement there take it down in writting?

A. I think he did.

Q. Your lights were all set at the time, were they not?

A. Yes, sir.

Q. The schooner had no lights, had she?

A. I seen a light on her, but could not tell whether it was on her bow or where it was.

Q. How long was it from the time the lookout reported her to the time you first saw her?

A. About a minute or two, not over two minutes, I should say.

Q. At that time, when you first saw her, she was in her starboard bow, was she not?

A. Yes.

Q. Was it not at that time that you starboarded your wheel?

A. I did not see her until I got my wheel hard a-starboard.

117 Q. The Potomac moving off, before the collision, about five points, did she not?

A. Yes, sir; about four or five points.

Q. Did you not state at the time inquired of, when you say you made a statement, that when the lookout reported the schooner, the second mate ordered you to starboard your wheel?

A. Yes, sir; that is right.

Q. Did she not then swing off, and then you give her a couple of spokes to port—to steady her?

A. Yes, sir; he ordered me to steady her. I gave her more than a couple of spokes.

Q. Was not the order of the second mate, when he first told you to starboard your wheel, to give her about two points to the eastward and steady ?

A. No, sir.

*Re-direct resumed.*

The first order was hard a-starboard; the next order was to steady; after the order to steady, I could say how much,
118 if any, she swung back. I can't if she swung back; I was too much engaged. She would run two or three times, say three times, before she would stop her headway. After a bell to stop and back, I don't think she would go twice the length of herself; upon reflection, the next order after the order to steady was heard a-starboard again, and I did it, I think. I could see a vessel clearly a mile that night.

JOHN BYRNE.

119 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday the 26th day of July, in the year of our Lord one thousand eight hundred and sixty-five. Present: The honorable Samuel R. Betts, district judge.

MOTT BEDELL
*vs.*
THE STEAMSHIP POTOMAC, HER ENGINES, tackle, &c.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libellants recover, in this action, ag'st the steamer Potomac, her engine, tackle, &c., the damages by him sustained by reason of the collision, in the pleadings mentioned, with his costs to be taxed; and that it be referred to a commissioner of this court to ascertain and compute the amount due the libellant for such damages, and report thereon to this court with all convenient speed.

SAML. R. BETTS.

120 Endorsed: United States District Court for the southern district of New York. Mott Bedell *vs.* The St'ship Potomac, her engine, tackle, &c. Benedict, Burr & Benedict, p. lib'l't. Mann & Parsons, proctor for cl'm'ts. Decree for lib'l'nts, and costs. Order of reference. Filed the 26 day of July, 1865.

121 District Court of the United States for the southern district of New York.

*Commissioner's Report.*

MOTT BEDELL
*vs.*
THE STEAMSHIP POTOMAC, HER ENGINE, TACKLE, &c.

In pursuance of a decretal order made in the above-entitled cause, on the day of , in the year of our Lord one thousand eight hundred and sixty- , by which, among other things, it was referred to the one of the commissioners of this court, to ascertain and compute the amount due the libellant for damages, &c., caused by the collision mention in the pleadings in this case, and to report thereon to this court with all convenient speed, I, Charles W. Newton, commissioner for the south'n dist. of New York, to whom the matter was referred, do report, that I have been attended by the proctor of the respective parties, and have taken and examined the testimony, and do find that there is due to the libellant, at the date of this my report, the sum of seventeen thousand two hundred and sixty-five dollars and nine cents, ($17,265 09,) which sum I have arrived at as per following statement:

| | | |
|---|---|---|
| Value of sch'r "A. V. Bedell" when new, 262 tons, *a* $42 50 | | $11,135 00 |
| Add one-third for value of sails | | 3,711 66 |
| | | 14,84666 |
| Call schooner at the time of the collision 4½ yrs. old. Deduct depreciation 5 per cent. for 1st year | | 742 33 |
| Value of schooner end of the first year | | 14,104 33 |
| Deduct depreciation 5 per cent. for 2d year | | 705 21 |
| Value of the schooner end of the 2d year | | 13,399 12 |
| Deduct depreciation 5 per cent. for 3d year | | 669 95 |
| Value of sch'r end of the 3d year | | 12,927 17 |
| Deduct depreciation 5 p'r c't. for 4th year | | 636 45 |
| Value of vessel end of 4 year | | 12,092 72 |
| Deduct depreciation 3½ per cent for last h'lf year | | 302 31 |
| Value of vessel at time of loss | | 11,790 41 |
| Int. from time of loss, July 15, 1859, to date of report, M'ch 3, 1866, being 6 y'rs, 7 months, and 18 days, at 7 per cent | | 5,474 68 |
| Am't reported due | | 17,265 09 |

All of which is respectfully submitted. Dated N. Y., M'ch 3, 1866.

CHAS. W. NEWTON,
*U. S. Commissi ner.*

122 United States District Court for the southern district of New York.

MOTT BEDELL
*vs.*
THE STEAMSHIP POTOMAC, &c., &c.

*Commissioner's report.*

J. E. PARSONS. Esq.—DEAR SIR: Please take notice that we shall submit the within report on Tuesday, the 6 of M'ch, and the opening of the court.

Yours, resp'y,

BENEDICT, BURR & BENEDICT.

Filed the 6 day of M'ch, 1869.

Endorsed: Mott Bedell *vs.* The Steamship Potomac, &c,

123 U. S. District Court, southern district of New York.

MOTT BEDELL
*vs.*
THE STEAMSHIP POTOMAC, HER ENGINE, TACKLE, &c.

The claimants in the above cause hereby except to the report of Charles W. Newton, esq., the commissioner therein, bearing date March 3d, 1866, for that, first, the said commissioner has allowed to the libellant the sum of five thousand four hundred and seventy-five 68-100 dollars in the sum reported to be due him as interest upon the sum reported as the value of the libellant's vessel from the time of her loss to the date of the commissioner's report, whereas the claimants are advised and believe that the allowance of interest in such case is not according to law or the rules and practices of this court.

Dated M'ch 5, 1866.

MANN & PARSONS,
*Cl'm'ts' Proctors.*

SIR: The within are the exceptions of the claimants to the report of the commissioner herein.

M'ch 5, 1866.

MANN & PARSONS,
*Cl'm'ts' Proctors.*

To the clerk or the U. S. Dist. Court.

Filed M'ch 6, 1856.

124 Endorsed: 15. 499. U. S. Dist. Court. Mott Bedell *vs.* The Steamer Potomac. Claimants' exceptions. Mann & Parsons, cl'm'ts' proctors.

125 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 13 day of M'ch, in the year of our Lord one thousand eight hundred and sixty-six. Present, the honorable Samuel R. Betts, district judge.

MOTT BEDELL
*vs.*
THE ST. SHIP POTOMAC, &c. } 15. 499.

Ordered. that the exceptions to the commissioner's report in this cause be overruled.

126
127 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 15th day of March, in the year of our Lord one thousand eight hundred and sixty-six. Present, the Honorable Samuel R. Betts, district judge.

MOTT BEDELL
*vs.*
THE STEAMSHIP POTOMAC, HER ENGINE, TACKLE, &c. } 15. 499.

On reading and filing the report of C. W. Newton, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages by collision in the pleadings mentioned, with interest thereon, the sum of ($17,265 09,) seventeen thousand two hundred and sixty-five 9-100 dollars, and exceptions to said report having been filed, now, on motion of Benedict, Burr & Benedict, proctor for the libellant, it is ordered that said exceptions be overruled and the [the] report be in all things confirmed, and that the libellant recover in this action against the steamship Potomac, her tackle, &c., the amount reported due, together with his costs to be taxed, which costs have been taxed at the sum of dollars, and that said steamship, &c., be condemned therefor.

And on like motion, it is further ordered that out of the proceeds of the stipulators of the claimants for costs and value, when paid into the registry of the court the clerk of this court pay to the libellant or his proctors the amount reported due, together with his taxed costs.

And on like motion of Benedict, Burr & Benedict, proctors for the libellant, it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the stipulators for costs and value aforesaid pay into court the amount of their stipulations and that the

clerk of this court distribute the proceeds in satisfaction of this decree.

(Signed)

SAM'L R. BETTS.

128 Endorsed: United States District Court for the southern district of New York. M. Bedell *vs.* The St. Ship Potomac, &c. Benedict, Burr & Benedict, proctor for libel't. Final decree in rem. on confirmation of commissioner's report. Filed and entered the 15th day of M'ch, 1866.

129 U. S. District Court, southern district of New York.

MOTT BEDELL
*vs.*
THE STEAMSHIP POTOMAC, her engine, tackle, &c.

SIR: The claimant intend to appeal from the final decree of the court in this cause.

Dated March 15, 1866.

Yours, &c.,

MANN & PARSONS,
*Cl'm'ts' Proctors.*

To GEO. F. BETTS, Esq., *Clerk.*

Endorsed: U. S. District Court. 15, 499. Mott Bedell *vs.* The Steamship Potomac, her tackle, &c. Notice of appeals. Mann & Parsons, cl'm'ts' proctors. Filed March 20, 1866.

130

131 Circuit Court of the United States, south'n dist. of New York.

MOTT BEDELL, appellee,
*v.*
THE STEAMER "POTOMAC," her engines, tackle, apparel, &c., John E. Parsons, Frederick Cromwell, John H. Clark, Samuel H. Seaman, Sarah S. Cromwell, as executor of Henry B. Cromwell, deceased; Barnabas Hammett, and Asa Packer, Samuel D. Babcock as trustee, and Daniel Cromwell, jr., and Ann W. Cromwell, as administrators, &c., of William D. Cromwell, deceased, clm'ts and appellants.

To the honorable the Circuit Court of the United States for the southern district of New York in the second circuit:

The appeal of the above-named claimants, appellants, respectfully showeth that on the 18th day of October, 1859, the said Mott Bedell exhibited his libel in the District Court of the United States, for the south'n district of New York, against the steamer Potomac,

132 her engine, tackle, apparel, &c., in a cause of collision, civil

and maritime, for the recovery of damages alleged by him in his said libel to have been by him sustained by the loss of the schooner A. V. Bedell, of which he stated himself to be the owner, by collision at sea with the said steamer "Potomac," and praying that the said vessel might be condemned and sold to pay the same; that upon process thereupon issued the said steamer Potomac, having been arrested, Henry B. Cromwell, now deceased, Joseph Noble, Barnabas Hammett, and Asa Packer, partners composing the firm of Noble, Hammett & Co.; Samuel D. Babcock as trustee, and Daniel Cromwell, jr., and Ann W. Cromwell as administrator, &c., William D. Cromwell, deceased; owners of the said steamer on about the 20 day of October, 1859, intervened as such, claiming to be such owners, and on or about the 9th day of Nov'r, 1859, filed their answers to the said libel, praying that the said libel might be
133 dismissed with their costs in that behalf, as by reference to the said libel an answer may more fully appear; that on the 2d day of April, 1864, and before the hearing of the said cause, the said Henry B. Cromwell died, leaving his last will and testament, which was thereafter duly admitted to probate by the surrogate of the county of Kings, of which he was an inhabitant at the time of his death, (pursuant to the laws of the State of New York,) in and by which he appointed, as the executors thereof, the said Frederick Cromwell, John E. Parsons, John H. Clark, Samuel H. Seaman, and Sarah S. Cromwell, to whom the said surrogate did thereafter, and before the hearing of the said cause, grant letters testamentary upon the said will as executors, of which they duly qualified; that to the said executors, as such, survived the interest in the said steamer Potomac, her engines, tackle, apparel, &c., and in the defence
134 of the said cause of the said Henry B. Cromwell, and in aid of which he so intervened as aforesaid; that subsequent to the filing of the answer herein, and before the hearing of this cause, the said Joseph Noble, who, with the said Barnabas Hammett and Asa Packer, composed the firm of Noble, Hammett & Co., and as such intervened for their interest herein, also died, leaving him surviving the said Barnabas Hammett and Asa Packer, to whom survives the interest in the said steamer Potomac, her engines, tackle, apparel, &c., and in the defence of the said cause so claimed by the said Joseph Noble, Barnabas Hammett, and Asa Packer, and in aid of which they so intervene as aforesaid; that the said cause came on to be heard before the Hon. Samuel R. Betts, judge of the said District Court, on or about the 16th day of February, 1865, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge,
135 having deliberated thereon, on the 28 day of July, 1865, made a decree in the said cause, wherein it was, among other things, decreed that the said steamer Potomac and those in charge of her at the time of the said collision were in fault in respect thereto, and that the damages occasioned thereby should be borne by the said claimants, and it was thereby decreed that it be referred to a commissioner to ascertain the amount of such damages sustained by the

libellant by the said collision, as by reference to the said decree will more fully appear; that under the said decree a reference was had to Charles W. Newton, esq., one of the commissioners of this honorable court, who, on the 3d day of M'ch, 1866, made his report, whereby he reported that there was due to the libellant on that day for his damages sustained by the collision in the pleadings mentioned seventeen thousand two hundred and sixty-five dollars and
136 nine cents, ($17,265 09-100,) to which report these claimants, on or about the 6th day of March, 1866, filed their exceptions.

And afterwards, to wit, on the 15th day of March, 1866, a final decree was made herein by the said District Court, confirming the said report, and decreeing that the libellants should recover the amount so reported due by the said commission together with costs to the said libellant, all of which will more fully appear by said decree.

And these appellants are advised and insist that the said decrees and the said report of the said commissioner are erroneous, inasmuch as, among other things, there was no fault on the part of the said steamer, or those in charge of her at the time in producing the said collision, and the said libel should have been dismissed with costs to these claimants against the said libellant, and inasmuch further as the said libellant did not sustain the damages so reported by the said commissioner.

137 Wherefore, and for other reasons, these appellants appeal to the next Circuit Court, to be held in the said district, from the whole of the said decrees of the said District Court. And on the said appeal, they intend to have the cause heard anew on the same pleadings and the same proofs, and they pray that the said decrees, so appealed from and every part thereof, be reversed with costs, or that such other decree or decrees may be made thereupon as to the said Circuit Court may seem just, and that the said appellee may be condemned to pay to these appellants their damages and costs in the premises.

And they pray that the record and proceedings may be returned to the said Circuit Court.

MANN & PARSONS,
*Cl'm'ts' Proctors.*

JOHN E. PARSONS, *Advocate.*

138 Endorsed: 15, 499. U. S. Circuit Court, south. dist. of New York. Mott Bedell, appellee, *vs.* The Steamer Potomac, &c., and others, cl'm'ts and apellants. Mann & Parsons, cl'm'ts' proctors. John E. Parsons, advocate. We hereby admit due and timely service of within appeal. Dated M'ch 29, 1866. B. B. & B. Filed M'ch 29, 1866.

139 Circuit Court of the United States of America, for the southern district of New York, in the second circuit.

*Bond for costs.*

MOTT BEDELL, lib'l'nt and appellee,
*vs.*
THE STEAMSHIP POTOMAC, HER TACKLE, &c., Frederick Cromwell, and o'rs, cl'm'ts, appellants.

Know all men by these presents, that we, John H. Clark and Samuel H. Seaman, of the city of New York, are held and firmly bound unto the above-named libellant and appellee, in the sum of thirty-six thousand five hundred dollars, to be paid to the said libellant, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 28th day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimants and appellants have prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the District Court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the abovenamed claimants and appellants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to made their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] JNO. H. CLARK.
[SEAL.] SAM'L H. SEAMAN.

Sealed and delivered, and taken and acknowledged, this 28th day of M'ch, 1866, before me.

[SEAL.] W. D. JONES,
*Notary Public N. Y. City.*

140 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

John H. Clark and Samuel H. Seaman, being duly sworn, each depose and say, that he resides in the eastern district of New York; that he is worth the sum of thirty-six thousand five hundred dollars over and above all his just debts and liabilities.

SAM'L H. SEAMAN.
JNO. H. CLARK.

Sworn to this 28th day of M'ch, A. D. 1866, before me.

W. D. JONES,
*Notary Public N. Y. City.*

We approve of the within bond.

BENEDICT, BURR & BENEDICT,
*Lib'l'nt's Proctors.*

Endorsed: U. S. Circuit Court. Mott Bedell, lib'l'nt, appellee, *vs.* The St'ship Potomac, her tackle, &c. Bond for costs and damages on appeal. Man & Parsons, app'l'nts' proctor. Filed this 29th day of M'ch, 1866.

141 At a stated term of the Circuit Court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday the 26th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

MOTT BEDELL, lib'l'nt and appellee,
*v.*
THE S. S. "POTOMAC," & *al.*, cl'm'nts and appellants.

The appeal from the District Court, in this case, coming to be heard. Mr. Benedicts reads testimony from the Apostles, and argues on the part of the appellees; Mr. Parsons reads testimony from the Apostles, and argues on partof the appellants.—Cur. adv. vult.

142

143 At a stated term of the Circuit Court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the 26th day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

MOTT BEDELL
*v.*
THE ST'SHIP POTOMAC, her engine, &c.

The appeal of the claimants in this cause coming on to be heard, after hearing John E. Parsons, advocate for the claimants and appellants, and E. C. Benedict, esq., advocate for the libellant and respondent, and after due deliberation thereon—

It is now ordered, adjudged, and decreed, that the decree of the District Court of the United States of America, for the southern district of New York, made the 15th day of March, 1866, sustaining the libel herein, and condemning the said steamship Potomac in damages and costs, be and the same hereby is reversed, and that the said libel be dismissed.

144 And it is further ordered, adjudged, and decreed, that the said claimants and appellants do recover ag'st the libellant and respondent their costs in the said District Court and in this court, besides disbursements, together amounting in all to four hundred and eleven 28-100 dollars,

And it is further ordered, adjudged, and decreed, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court or the said last-mentioned sum be paid, the claimants and appellants do have execution to collect the same according to law, and the course and practice of this court.

S. NELSON.

Endorsed: Filed Oct. 26, '67.

145 U. S. Supreme Court, south'n district of New York.

MOTT BEDELL, libl'nt and appellant,
*vs.*
THE STEAMSHIP POTOMAC, HER tackle, &c., John E. Parsons and others, claimants and appellees.

To the honorable the Supreme Court of the United States:

The appeal of Mott Bedell, the above-named libellant and appellant, respectfully shows that, on the 18th day of October, 1859, the above-named libellant and appellant filed his libel in the District Court of the United States for the southern, district of New York, ag'st the steamship Potomac, her tackle, &c., in a cause, civil and maritime, for the recovery of damages, alleged to have been sustained by him, to the schooner A. V. Bedell by collision with the said steamer, and said steamer was arrested upon process issued upon said libel; that Henry B. Cromwell, now deceased, Joseph Noble, Barnabas Hammett, Asa Packer, Samuel D. Babcock as trustee, and
146 Daniel Cromwell, jr., and Ann W. Cromwell, as administrators of William D. Cromwell, deceased, thereupon appeared and filed their claim to said vessel, and she was thereupon discharged upon the claimants entering into stipulation for costs and value; that thereafter, and on or about the 9th day of November, 1859, the claimants duly filed their answer to said libel, praying that said libel be dismissed with costs in that behalf, as by reference to the said libel and answer will more fully appear; that thereafter and before the hearing of said cause, Henry B. Cromwell departed this life, and John E. Parsons, Frederic Cromwell, John H. Clark, Samuel H. Seaman, and Sarah S. Cromwell duly qualified as his executors under his last will and testament, to whom survived said Cromwell's interest in said steamer and in the defence of this action; that thereafter and before the hearing of said cause said Joseph Noble also departed this life, leaving him surviving Barnabas Hammett and
147 Asa Packer, to whom survived the interest of said Noble in the said steamer and the defence of this cause; that such proceed-

ings were thereupon had in said cause that, on the 15th day of March, 1866, a final decree was made, and pronounced therein by the said District Court, wherein it was adjudged that the said libellant recover ag'st said steamer the sum of seventeen thousand two hundred and sixty-five 09 100 dollars, together with costs; that thereupon the claimants duly appealed from said final decree to the Circuit Court of the United States for the southern dist. of New York, and the said cause was removed thereby into said Circuit Court, and there tried anew, and such proceedings were had in said Circuit Court that afterwards and on or about the 26th day of October, 1867, the said Circuit Court made a final decree in said cause, whereby it was decreed that the said decree of the District Court be reversed, and the libel of the libellant dismissed with costs, which said
148 decree of the said Circuit Court is, as this appellant is advised, erroneous and ought to be reversed; wherefore this appellant appeals from the whole of said decree of said Circuit Court to the Supreme Court of the United States, and respectfully prays that said decree of the said Circuit Court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the Circuit Court and every part thereof may be reversed, and a decree made affirming the decree of the said District Court, and decreeing to the libellant and appellant the amount of his damages in the premises with costs, or that such other decree be made by said Supreme Court as may be just.

149 BENEDICT, BURR & BENEDICT,
*Pr. per appellants.*
E. C. BENEDICT, *Advocate.*

Endorsed: U. S. Circuit Court, Mott Bedell, *vs.* S. S. Potomac. Appeal. Benedict, Burr & Benedict, proctors. E. C. Benedict, advocate. Filed Nov. 9, 1867.

150

151 Circuit Court of the United States of America, for the Southern district of New York, in the second circuit.

*Bond for Costs.*

MOTT BEDDELL, libel'nt and appellant,
*vs.*
THE STEAMSHIP POTOMAC, HER TACKLE, &c., John E. Parsons, and others cla'nts and appellees.

Know all men by these presents, that we, Mott Bedell, Elzey S. Powell, and John Woolsey are held and firmly bound unto the above-named claimants and appellees in the sum of nine hundred dollars, to be paid to the said appellees, for the payment of which, well and truly

to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrator, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 8th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named Mott Bedell has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judge of the Circuit Court of the United States, for the southern district of New York.

Now, therefore, the condition of this obligationis such, that if the above-named appellant shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] MOTT. BEDELL.
[L. S.] E. S. POWELL.
[L. S.] JOHN WOOLSEY.

Sealed and delivered, and taken and acknowledged, this 8th day of Nov'r, 1867, before me.

[L. S.] W. D. JONES,
*Notary Public N. Y. City.*

152 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

Elzey S. Powell and John Woolsey, being duly sworn, each depose and say that he resides in the city of Brooklyn, N. Y., and that he is worth the sum of eighteen hundred dollars over and above all his just debts and liabilities.

E. S. POWELL.
JOHN WOOLSEY.

Sworn to this 8th day of Nov., A. D. 1867, before me.

[L. S.] W. D. JONES,
*Notary Public N. Y. Co.*

I approve the above bond and the sufficiency of the sureties thereto. Nov. 11, 1867.

SAM'L BLATCHFORD, *D. J.*

Endorsed: U. S. Circuit Court. Mott. Biddell *vs.* The S. S. Potomac. Filed this 13 day of Nov., 1867.

153 By the Honorable Samuel Blatchford, one of the judges of the Circuit Court of the United States for the southern district of New York, in the secoud circuit, to John E. Parsons, Frederic Cromwell, John H. Clark, Samuel H. Seaman and Sarah S. Cromwell, executors of Henry B. Cromwell, deceased, Barnabas Hammett, Asa Packer, Samuel D. Babcock trustee, and Daniel Cromwell, jr., and Wm. W. Cromwell as administrators of William D. Cromwell, deceased:

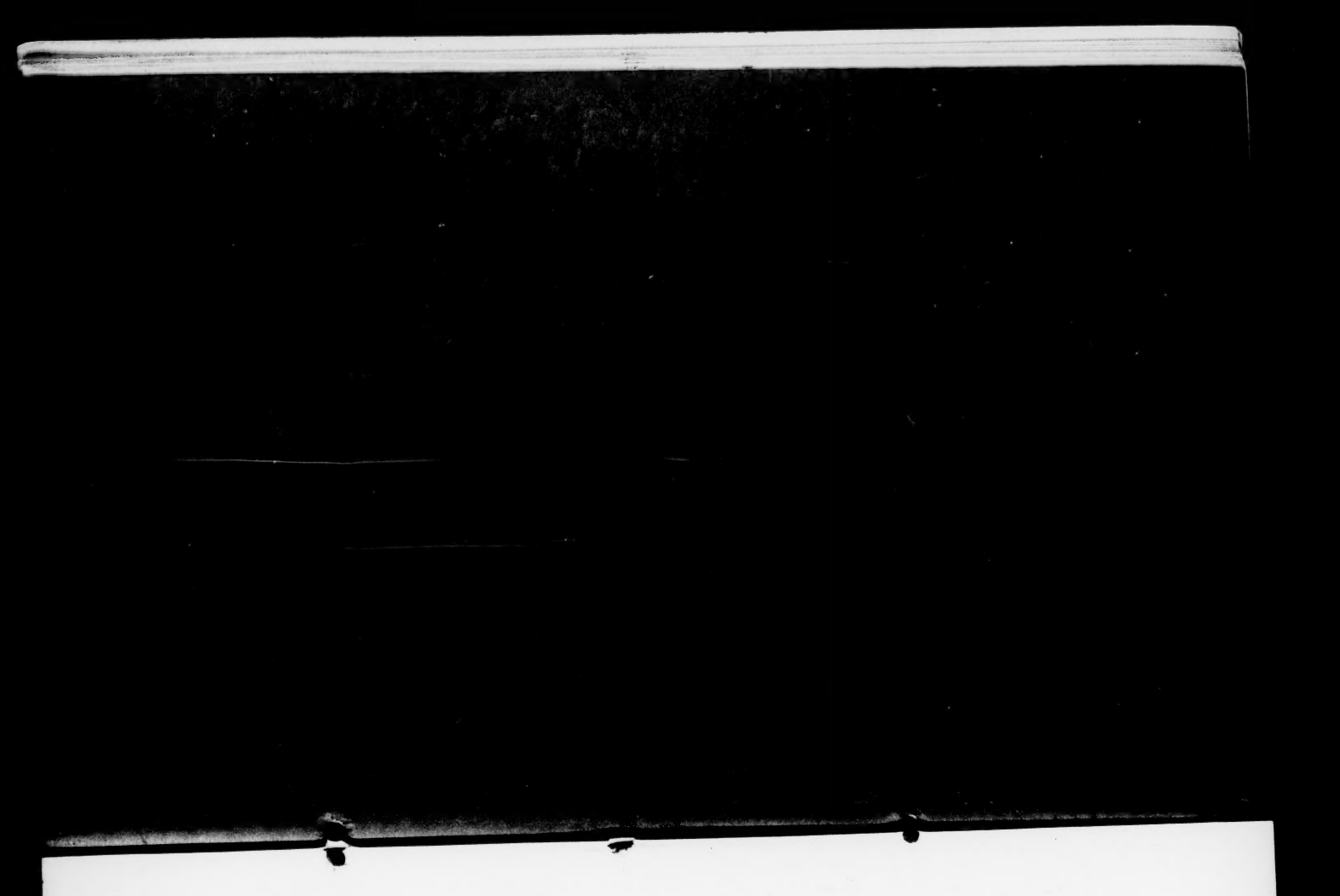
Whereas Mott Bedell, libellant and appellant, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the southern

district of New York, in the second circuit, made in favor of you, the said John E. Parsons, Frederic Cromwell, John H. Clark, Samuel H. Seaman, and Sarah S. Cromwell, executors of Henry B. Cromwell, deceased, Barnabas Hammett, Asa Packer, Samuel D. Babcock, trustee, and Daniel Cromwell, jr., and Ann W. Cromwell, administrators of William D. Cromwell, deceased, against said Mott
154 Bedell, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the 22d day of Dec'r, next to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 11th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

SAM'L BLATCHFORD, *D. J.*

Endorsed: U. S. Circuit Court, Mott Bedell *v.* The S. S. Potomac, &c. Citation. Benedict, Burr and Benedict, proctors, E. C. Benedict, advocate. We admit due and personal service of the within citation, the same as if served on all the claimants, appellees. Jno. E. Parsons, Mann and Parsons, cl'nts pr. Filed Nov. 13, '67.



# Supreme Court of the United States.

| | |
|---|---|
| MOTT BEDELL, *Libellant and Appellant*, vs. THE STEAMSHIP "POTOMAC," HER TACKLE, &c., JOHN E. PARSONS, and others, *Claimants*. | BRIEF.—FOR LIBELLANT AND APPELLANT. |

## ABSTRACT AND BRIEF.

This is a cause of collision between the Steamer Potomac and the Schooner A. V. Bedell.

The Libel was filed in the District Court for the Southern District of New York, Oct. 18, 1859, (fol. 5).

The answer was filed Nov. 9, 1859, (fol. 25).

The cause was tried Feb. 16, 1865, (fol. 26).

The decree in the District Court was made July 26, 1865, (fol. 120), in favor of the appellant, with a reference to ascertain the damages.

The damages were reported at $17,265.09. The report was excepted to because interest was allowed as part of the damages, (fol. 124).

The exceptions were overruled March 13, 1866, (fol. 126).

The final decree for the amount of the report with costs was entered March 15, 1866, (fol. 128).

The claimants gave notice of appeal March 20, 1866, (fol. 130), and filed their appeal March 29, 1866, (fol. 139).

The cause was heard on appeal Nov. 26, 1866, (fol. 142), and the decree of the Circuit Court was entered Oct. 20, 1867, reversing the decree of the District Court and dismissing the libel, (fol. 144).

The libellant appealed to this court, Nov. 9, 1867. (Fol. 150.)

## BRIEF.

### *GENERAL STATEMENT.*

The schooner A. V. Bedell, on the night of July 7, 1859, close hauled, was sailing by the wind, which was about northwest by north to about west by north. The course of the schooner was a little east of north. She discovered a light of a vessel ahead, which proved to be the steamer Potomac. The steamer held her course for a while and, till within a short distance of the schooner, was apparently heading directly for her. The schooner, being jammed on the wind, could not starboard safely, and accordingly ported her helm hard a port, which seemed the only possible way to escape destruction, but the steamer instead of porting her helm and going under the stern of the schooner and avoiding all danger, on the contrary, starboarded her helm, ran upon the schooner, endeavoring to cross her bows, struck her amidships and sunk her.

This state of facts is most fully proved by the man at the wheel of the schooner, and confirmed by other witnesses.

He says, (fol. 28), "wind was about west northwest, we were heading to northward, jammed upon the wind. I saw the light of a vessel ahead, a white light, distant, say half or perhaps a quarter of a mile; (fol. 29). I cannot judge well of distances at night, when vessels are rapidly approaching."

"We kept sailing to see whether she would not change her course. She did not change her course, and the captain ordered me to put the helm up. I did so; put the helm a-port, hard a-port, our vessel then swinging off. Steamer put her helm up also, and kept running off, too. The captain hailed them, and hallooed out to them. He hailed her: 'steamer ahoy! put your wheel down, and let her luff up, and keep her away from us, or you will be into us.'" Fol. 29. "She then came into us; hit us right abaft the fore rigging—came on, bows on, under full head of steam—cut right in, smashing in the whole side" at right angles on the larboard side.

The wreck was examined by a diver, Baker, fol. 3, and the wound in her corresponded with the description of the witness Leibrand. A wound on the port side—a square blow abaft the forerigging. It was a cut straight in—in some six streaks of the deck. She went right in three or four feet, fol. 32. "The blow was not a glancing blow—square—one side of the cut was as clean as the other." Fol. 33.

"Saw no light but a white light." Fol. 30. "I heard no hails from steamer. I think I should have heard if there had been a hail from the steamer."

All hands on the schooner's deck were active and vigilant, including the captain, who was a man of the greatest skill and caution.

The steamer's course was due south when reported by the lookout "vessel ahead." The mate, in the pilot house, with his head bowed upon his arms, apparently asleep, and the captain in his bed, asleep, were both aroused by the report. The mate, without seeing the schooner, ordered the helm starboard two points. In a minute, he saw the vessel half a point on the starboard bow, and then ordered the wheel to be steadied till when he saw the schooner "draw on them," "was nearing them," "after a little time," he ordered the wheel hard a-starboard and hailed the schooner to put her helm a-starboard. The captain who had remained in his berth listening for what might occur, then jumped into the wheel house and rung the bell to stop the engine; then the collision took place. Fol. 39, 40.

The steamer had, besides the regulation lights, an extra white light forward on her stem. Answer, fol. 22; Watson, fol. 39.

The captain of the schooner was on deck, but he is dead. There was a man on the lookout on the forecastle, but him we have not been able to find.

The rest of the ship's company, including the mate, were below "turned in."

The deposition of the mate was taken, and was before the District Court, but was not incorporated in the record, and was not before the Circuit Court.

*CORRECTION.*

In the first line of the second page of the record, the word "starboard" should be "larboard." The same error appears to have existed in the copy of the Apostles furnished to the Judge of the Circuit, as his opinion adopts the incorrect statement.

It was unfortunate also, that the direct testimony of Mott Bedell was incorrectly set forth in the Circuit Court, and that the libellant was unable to use the testimony of Gillespie, the mate, as he offered to do in the Circuit. We were left to stand before the Circuit Court with a presumption which was pressed against us, apparently with some effect, that we had declined to use the testimony of both our captain and mate; for the case was then without any proof of the death of the captain. We thus seemed justly chargeable with suppressing or keeping back important testimony; in all these points we are now set right.

*NEGLIGENCE OF THE STEAMER.*

As a statement of the libellant's theory of the case and a suggestive guide in the detailed examinations of the testimony the attention of the Court is called to the following points of negligence on the part of the steamer.

1. It was negligence in the captain when it was his watch on deck, in such a thoroughfare, to go to bed and leave the vessel to the second mate, and to remain in his bed several minutes after hearing the report of a vessel ahead, which he properly describes as an "alarm given" fol. 139, and not to come to his post on deck, until the vessels were on the point of striking—too late either to advise or to act to prevent the collision. It was his duty, on the approach of danger, to be upon the deck, and to give his seamanship, his prudence, and his command to the proper management of his vessel. Instead of which, he "jumped" in alarm from his bed to the wheel, and was bewildered and mistaken as to the positions and the courses of the vessels. Thus, he says, "we were heading to the eastward at the time, and she was kept off before the wind. When I got on deck she had her starboard tacks aboard—then she was heading well to the southward and eastward." Fol. 40. None of which is true.

2. It was negligence in the second mate, thus left by the master in charge as the officer of the deck, while in such a thoroughfare, to be asleep or not vigilant in his watch, up to the moment when the vessel was reported. His more intelligent eye might have seen the schooner much sooner, and enabled his deliberate judgment to place his vessel beyond the possibility of a collision, as he might easily have done. Being suddenly aroused by that report, it was natural that he should be embarrassed and flustered, and give orders, as he did, from impulse and not judgment. Nothing could be more inopportune than his action before seeing the reported vessel or knowing anything of her character or course, to order his helm a-starboard, to go to the eastward and immediately on seeing her, to steady his helm, and swing her back to the westward. Such vacillation might well embarrass the coming vessel.

3. It was negligence in the steamer to have an extra white light on the stem. It was contrary to the regulation, and its effect was to deceive those on the schooner, and to cause them to believe that she had but one light, and that a white one. The

laws of human vision are familiar to us all. The green and red lights which are never very brightly visible, would be absolutely invisible when placed directly behind a bright white light. The white lights would be nearer and brighter, and would dazzle, and if there should be glimpses of the colored lights the effect of the many and changing lights would be bewildering. The only effect of the dazzling light on the stem would be "to lead to bewilder, and dazzle to blind."

4. It was negligence in the steamer to starboard before making out carefully the position, the character and the course of the schooner, then three-fourths of a mile off, in fair weather and star light. Most especially it was negligence in the steamer to starboard her helm after she knew that the schooner had ported. When she saw the little craft trying to escape to the eastward, why did she hurry over to the eastward to endeavor to head her off, when porting her helm and going to the westward would have made a collision impossible? She struck the schooner about midships, so that if the steamer had only gone 50 feet further to the westward, all would have been safe. If she had not starboarded the last time there would not have been a collision.

5. It was negligence in the steamer, seeing as she did, a small vessel close hauled, almost directly in her path, to keep on at the rate of ten miles an hour without even checking her speed, till it was too late to control her and keep her from running over a sailing vessel in full sight for half or three-quarters of a mile. Had she delayed enough to give the schooner time to go 50 feet, there could have been no collision. It only required fifteen seconds of delay.

6. When the steamer saw the schooner had fallen off, and had taken a new course further to the eastward, if there was time for her to avoid her by porting her wheel, she was bound to do so—the previous courses of the vessel were then of no importance, a new state of things had arisen which is now to be considered the original state of things, and it was negligence in the steamer not

to go under her stern. The captain of the steamer, says, when I got out on deck she had her starboard tacks aboard, then she was heading well to the southward and eastward. (Fol. 39).

*SCHOONER FREE FROM NEGLIGENCE.*

It was not negligence in the schooner when she saw the steamer coming, to keep sailing to see whether she would not change her course, it was her duty to do so, and when she did not change her course, and when the schooner could not starboard, being jam on the wind, it was not negligence to put her wheel hard a port and come before the wind, as an only mode of possible escape. It was her duty also to do that.

It was not negligence for her when the vessels were approaching in opposite directions, head and head, at a safe distance, to port her wheel, assuming that the steamer would also port, as she ought to do.

*THE SCHOONER'S LIGHT.*

The question, whether the schooner had a light, is immaterial, for the schooner was seen more than three-quarters of a mile to a mile off, which was abundant distance to have avoided her on either side. She clearly was not bound to have a light. It was not until September, 1864, that lights were required on sailing vessels, (13 Stat. at large, 58).

"It has been insisted that the schooner was in fault in not carrying a light so as to enable the vessels approaching to see her at a greater distance. But all agree that it was a clear starlight, and hence there could be no difficulty with a proper lookout in seeing to a sufficient distance to enable the steamer to make the proper movement to avoid her. It is not usual for sailing vessels to carry lights on such a night."

10 Howard, 586. St. John *vs.* Paine.

*THE TIME THE VESSELS WERE IN SIGHT.*

The steamer's usual speed was ten miles, and she had the wind free, she could not therefor have been going less than ten miles.

The schooner, loaded, close hauled, probably four (say five) miles an hour.

They were thus approaching each other at the rate of a mile in four minutes—three fourths of a mile in three minutes.

This whole transaction, from the time the vessels first saw each other, was within a space of three-quarters of a mile, and three minutes' time. Three minutes after she was seen, a loaded little sailing vessel, close hauled, creeping along four miles an hour, was cut in two by a steamer going ten miles an hour, with unabated speed, seeing the schooner all the time.

Short as the time and distance were, it is evident, and so the lookout on the steamer swears, that "There was plenty time enough to be clear of the vessel. There was nothing in the way to have prevented our going clear on either side of her." 105.

*THE POSITION AT THE COLLISION.*

At the time of the collision the vessels were at right angles. The steamer had been heading "due south," had swung off five points to southeast by east. The schooner was then heading northeast by north, having also swung off from her original course. The schooner's helm being put hard a port and the steamer's hard a-starboard.

When first seen, the vessels were approaching each other so nearly head and head, as to render a collision probable. The general rule in such cases, is for both vessels to port their helms The schooner did so. The steamer, on the contrary, starboarded and endeavored to cross the schooner's bow.

Both vessels kept their courses for a considerable time. When the danger was imminent, the schooner alarmed for her safety at the last moment, fell off from the wind and tried to escape, but was unable to do so.

This Court has taught us constantly that under such circumstances the burden is on the steamer to prove that she could not help it. The presumptions are all against her.

The claimant has always treated the case as one in which the vessels were originally approaching in opposite parallel lines, whereas in fact the steamer's course was due south, and the schooner's course was north by east.

The steamer's course was due south.—Foote, 60.

"Being on a due south course," answer fol. 21, but it was changed to south-east by east, she having swung off five points.

The schooner's course must have been north by east, or at least north by east half north, but was changed to north-east by east, before the collision. A careful comparison of the testimony shows that the schooner was a half point on the steamer's starboard bow, sometime after she was discovered. "I heard some time after the vessel was reported, the schooner was on the starboard bow—when I saw her she was a quarter of a mile off as near as I could judge."—Byrne, 111. Their courses could not therefore have been parallel when the schooner was first seen, but crossing each other at a very acute angle.

Robertson says he reported "a vessel ahead," fol. 107, not a vessel on the starboard bow. Byrne says, "I heard the vessel reported. I heard sometime after the vessel was reported, the schooner was on the starboard bow; when I saw her she was about a quarter mile off." Byrne, 111.

"I did not see the schooner till I got my helm hard a-starbord." 116.

"I did not see her till I got my wheel hard a-starboard."—117.

"The second mate ordered me to starboard my wheel. He then ordered me to steady her."

He says in the first place the first order was hard a-starboard, but corrects himself on reflection, and says that the order to hard a-starboard was after the order to steady, (fol. 119.) His testimony, therefor, is that the first order was to starboard—the mate says two points—then the order was to steady when she swung back—then the order to hard a-starboard, which he did, and then he saw her for the first time. Then she was one-quarter of a mile

off—then she was half a point, somewhere between half a point and a point on the starboard bow. The steamer had then been running half a mile towards the schooner. The mate says Robertson reported a vessel on the starboard bow. I ordered the man at the wheel, John Byrne, to starboard the helm two points. In a minute I saw the vessel myself, half a point on the starboard bow. I then ordered the man at the wheel to steady the he m.—59. The steamer's course was due south. I soon discovered that the schooner was nearing us. I told the man at the wheel to starboard the helm; he did so. I then heard the captain's voice on board the schooner, saying, steamer ahoy.—59.

He says in his statement, that after starboarding and steadying, he "soon saw that the schooner drew on the steamer, and told the man at the wheel to starboard his wheel more; did so."—55.

Thus the second starboarding was after the schooner changed her course and drew on the steamer; that is to say, after the schooner had taken a course which would lead her to the eastward of the steamer, he ordered the steamer starboarded further.—55.

He endeavored to go across her bows, instead of porting and going under her stern, as he could easily have done even then, and should have done, as soon as he saw her. He must have known from the wind, that she could not be going to the westward. A careful look would have shown him that, in fact, she was going a little to the eastward.

*WHEN DID THE VESSELS STEER TO THE EASTWARD.*

The steamer must have been going ten miles an hour, and the schooner, close hauled, on a five or six knot breeze, could not have been going more than four or five miles. The steamer was going twice as fast as the schooner, and was therefore perfect master of the positions. It is a great mistake to suppose that a steamer has a right to shave close to a sailing vessel and insist that she shall make no movement to save herself. These small loaded schooners cannot help feeling alarm, and endeavoring

to escape when they see these powerful steamers coming apparently at them unchecked. The cardinal and paramount rule is that both vessels shall endeavor to prevent a collision in spite of all absolute rules. The steamer was bound, as soon as she saw the schooner, only three minute's distant, to give her an unmistakable wide berth, which she could easily have done, on either hand, in three-quarters of a mile. If she had put her helm hard up or hard down there could have been no collision, for the schooner could never have overtaken her. If they had examined the schooner they would have found that although on the starboard bow, she was heading across the steamer's bow, so that it was the clear duty of the steamer to port her helm and go under the schooner's stern, unless she intended to go far to the east and take the risk of passing under her bows at a safe distance. But, what did they do? The second mate says he "told him to give the steamer about two points of the schooner, and steady."—(fol. 55.) "Soon saw that the schooner drew on the steamer, and then told the man to starboard his wheel more." Did so.—(fol. 55, and fols. 58—59.)

Byrne says "his order was to give her two points to starboard, and steady; after a while, he *again* told me to starboard."—(fol. 56).

It is thus shown that the steamer when she saw the schooner, starboarded a little, and instantly steadied her helm. The effect of this was really to make no difference in the course of the steamer, perceptible to the schooner; and after a while, seeing that the schooner was nearing her—had ported her helm—the steamer was again starboarded, moving off five points, trying to cross her bows, but was too late, and ran into the schooner.

This agrees with the testimony of Leibrand, who says: "We kept sailing to see whether she would not change her course. She did not change her course, and the captain ordered me to put the helm up. I did so put the helm a port, hard a port, our vessel then swinging off, both vessels coming towards each other. Steamer put her helm up also and kept running off too." The captain hailed them and halloed to them. He hailed her,

"Steamer ahoy, put your wheel down and let her luff up and keep her away from us or you will be into us." She then came into us. Hit us right abaft the fore-rigging. Came on bows on under full head of steam. Cut right in, smashing in the whole side. Fol. 29.

The schooner could not go faster—could not stop—could not turn to the left, for she was already "jammed on the wind." The only thing she could do was to turn to the right and run before the wind. In three minutes she might make 1,320 feet, one-quarter of a mile to the eastward. The steamer, in the same time had she ported her helm hard aport, might have gone half a mile to the westward, and the vessels would have been three-quarters of a mile apart! On the other hand, if the steamer, instead of her three movements "starboard," "steady," "starboard more," or "hard a starboard," had put her helm hard a starboard at first, she would have made half a mile of easting, and would have been a quarter of a mile east of the schooner.

*WHO FIRST RANG THE BELL ON THE STEAMER?*

"Capt. George W. Watson rang the bell." Fol. 59.

The second mate, Foote, says, in answer to sixth cross-interrogatory, (fol. 50), "who first rang the bell on board the Potomac after the schooner was discovered?" answer (fol. 65), "Captain Watson rang the bell after the schooner was discovered."

Captain Watson himself, says, "I rang the bell to stop the engine." Fol. 39.

Who stopped the steamer? Foote says, "Capt. George Watson stopped the steamer." Fol. 59.

Capt. Watson himself, says: (fol. 43), "I rang two bells when I went into the pilot house—that means stop the engine." "I saw the man at the lookout, before I pulled the bell. I was standing at the wheel when I first saw him. The first thing I saw when I went into the pilot house, was the man on the lookout, and the second mate within ten feet or so of him."—(fol. 43.)

Robertson, the lookout on the steamer, says: (fol. 103) "I sung out to the man at our wheel to ring the bell, to stop the engine; he did'nt understand me, and then ran myself to the wheel-house to strike the bell, and met the captain at the door, he was just ahead of me and he struck the bell. The Captain came from his room."

Byrne, the man at the wheel, says: (fol. 112), "Our vessel was not stopped at the time of the collision. The bell had rung but she had not stopped. The captain rung the bell—he rang the bell when he came into the pilot-house. I heard notice given from the man on the lookout to stop her."

*WHEN WAS THE BELL RUNG?*

Now when was the bell rung to give us notice, and when the bells to stop the engine?

This is extremely important.

Robertson, says: "Just the same moment the bell rung we struck them," (fol. 103). Byrne, says, "the bell had rung, but she had not stopped." Foote, second mate, says: "The steamer was stopped when the schooner was twenty yards distant," (fol. 60). She would run that distance in five seconds!

But again, Capt. Watson, says: "I went into my room about 10 o'clock and went to sleep," (fol. 43). "I was in my room just before the collision." "The first thing I heard was our man on the lookout sing out 'a sail a little on the starboard bow.' I heard the second mate as soon as the alarm was given, give an order to the man at the helm, to starboard the helm. I then waited and listened, and the second mate gave the order 'steady the wheel.' I then heard the second mate, after a little time, hail the schooner, and said, 'schooner, ahoy! put your helm a starboard.' I then jumped into the wheel-house and stopped the engine. I rang the bell to stop the engine—then the collision took place," (fol. 38). Her speed was not checked.

We have it thus demonstrated by the declarations of all the witnesses on both sides, and by all the circumstances, that they

saw us plainly for three-quarters of a mile, and kept on ten miles an hour, and never rang their bell, never hailed us, and never slackened their speed until we were in the very jaws of destruction, at the very moment of collision.

I know of no record of such a case before this. The one nearest to it is the Genesee Chief, in 12 Howard.

*THE LAW OF THESE POSITIONS, &c.*

"Steam vessels are regarded in the light of vessels navigating with a fair wind, and are always under obligations to do whatever a sailing vessel going free, or with a fair wind would be required to do under similar circumstances. Their obligation extends still further, because they possess a power to avoid the collision—not belonging to sailing vessels even with a free wind—the Master having the steamer under his command, both by altering the helm and by stopping the engines. They are also of vast power and speed compared with the craft, on our rivers and internal seas, propelled by sails, exposing the latter to inevitable destruction in case of collision, and rendering it all times difficult and not unfrequently impossible to get out of their way, *Greater caution and vigilance* are therefore naturally to be expected of those in charge of them to avoid the dangers of the navigation. This justly results from the superior power to direct and control the course and speed of the vessel, and the serious damage consequent upon a failure to avoid the danger. As a general rule, therefore, when meeting a sailing vessel close hauled, the latter has a right to keep her course, and it is the duty of the steamer to adopt such precautions as will avoid her."

10 Howard, 583. St. John *vs.* Paine.

"A vessel that has the wind free, or sailing before, or with the wind, must get out of the way of the vessel that is close hauled, and the vesel on the starboard tack has a right to keep her course, and the one on the larboard tack must give way. * * * Again, when vessels are crossing each other in opposite directions, and there is the least doubt of their going clear, the vessel on the

starboard tack should persevere in her course, while that on the larboard tack should bear up or keep away before the wind."

10 Howard, 581. St. John *vs.* Paine.

"These rules have their exceptions in extreme cases. Either vessel may find herself in a position at the time when it would be impossible to conform to them without certain peril to herself or a collision with the approaching vessel."

*Ibid* 582.

"The golden rule, so long established, must be strictly adhered to that the vessel on the larboard tack, is to give way and the vessel on the starboard tack to hold on, and the new rule which has been lately made for steamboats, namely: each to put the helm aport under all doubtful circumstances, assimilated to it."

"The vessel on the starboard tack puts her helm a port to keep the wind, and the vessel on the larboard tack does the same to bear away. That the same rule applied to sailing, as well as steam vessels, and if it should be strictly adhered to there would not be one thousandth part of the accidents which had occurred."

*Ibid* 583.

12 How., 460. The Genessee Chief.

"There are some leading facts in the case, which on the whole testimony are free from doubt. The collision took place in the open lake. It was a star-light night—the haze near the water was not enough to conceal the Cuba from those on the propeller. She was seen from the steamboat four or five miles off. She could always be seen at the distance of half a mile. The steamboat had the entire command of her course and a wide water, by which she might have passed the Cuba on either side at a safe distance, and if proper care had been taken on board the Genessee Chief after the schooner was first seen it would seem to be almost impossible that a collision should have happened, even if the schooner was carelessly or injudiciously managed. There was no necessity for passing so near to her as to create hazard. The steamboat could choose its own distance, and might have approached her slowly and cautiously."

"But there is no evidence of any fault on the part of the Cuba. She changed her course, it is true, when she was some miles distant from the propeller. But a vessel close hauled with a baffling wind, cannot always choose her course, but may be compelled to change it by a slight change in the wind. * * * * * This change was made when she was distant some miles, and there was ample time for those on board the propeller to observe it, and ample room to guard against it, and the captain and crew of the Cuba appear to have been watchful and attentive from the time the propeller was discovered. Nor do we deem it material to inquire whether the order of the captain at the moment of collision was judicious or not. He saw the steamboat coming directly upon him, her speed not diminished, nor any measures taken to avoid a collision, and if in the excitement and alarm of the moment a different order might have been more fortunate, it was the fault of the propeller to have placed him in a situation where there was no time for thought, and she is responsible for the consequences. She had the power to have passed at a safer distance, and had no right to place the schooner in such jeopardy that the error of a moment might cause her destruction, and endanger the lives of those on board, and if an error was committed, under such circumstances, it was not a fault."—*Ibid* 461.

*DECLARATIONS OF THE CAPTAIN.*

Some testimony is given as to declarations made by the captain of the schooner, confessing that it was all his fault—made while on the steamer, and on his arrival at Norfolk, as he stepped ashore among the friends and agents of the Norfolk steamers, and when noting and making his protest.

These declarations are not competent, except to impeach the captain if he should be called as a witness, and should testify otherwise. His death has prevented his being a witness, and they are not competent.

Such declarations are never of any value because of their loose and unreliable character. They are intrinsically improbable—no

intelligent master, making a protest to show that he was in the right, would be saying to everybody that he was in the wrong—when told that he had made such statements, he denied making them, and made contrary statements—(fol. 82)—and each witness makes him tell an entirely different story—which, for "a good man;" "a first rate man;" "very skillful," is quite improbable.

The statements of these witnesses seem to be only their opinions. Thus, the witness Stone, says, (fol. 79): "Whilst Capt. Ryder did not in so many words admit the schooner to have been in fault, the conclusion necessarily drawn from the conversations of both captains, and the crews of both vessels—all of whom I interrogated, was that the schooner mistaking the light of the steamer for that of the Rappahannock light vessel, and steering directly for it till it was too late to avoid a collision. Fol. 80. *It was admitted by all parties that the steamer rung her bells and reversed her engines as soon as she discovered the schooner*, but was too late for a collision to be avoided."

This last statement instead of being admitted, is denied and disproved by all parties.

The decree should be reversed.

E. C. BENEDICT,

*Counsel for Libellant.*

# District Court of the United States,

FOR

## SOUTHERN DISTRICT OF NEW YORK.

MOTT BEDELL,

*agt.*

THE STEAMSHIP "POTOMAC,"
HER TACKLE, &C.

## OPINION OF THE COURT.

JULY 26th, 1865.—BETTS, J.—About midnight, July 7, 1859, a collision occurred on the Chesapeake Bay, near the mouth of the River Rappahanock, between the steamship Potomac, bound on a voyage from Baltimore to Norfolk, and thence to New York, and the schooner A. V. Bedell, upon a voyage from New York to Alexandria. The schooner was foundered by the collision, and became a total loss thereby.

The course of the steamer was due south down the Bay. The weather was calm, there was no moonlight, but stars were visible in the sky, and each of the two vessels could see the other in their approach together, a distance of half or quarter of a mile apart, so as to distinguish the character of the objects and the direction of their apparent courses. The schooner running up the Bay nearly directly north, close hauled upon a free breeze north or northerly, and steering by the wind, and the steamer heading upon the sailing vessel on her track below.

The vessels had neared each other to within a few yards, and indeed feet apart, it was discovered they were coming immediately in contact, and both called out simultaneously and in alarm each to the other to get out of the way to avoid sinking the other, each vessel attempting to change its course, and after a few minutes of fright and hopeless outcry on board of both, the two fell together about end and end, and the schooner was instantly sunk at the spot by the first blow.

I hold it needless to attempt to ascertain and adjust the reliable evidence gatherable out of the hurried and indefinite observations and impressions of the three or four witnesses, who might have been able to collect admissible particulars, conducing to show which vessel was most skillfully and properly managed in the manœuvres attempted. Because, in my opinion, that whole matter was definitively determined as a *principle of law* so soon as the schooner was discerned from on board the steamer. The testimony had no further agency or office to fulfil in the case in respect to the rights and responsibilities of the relative parties after it had clearly designated that a steam and a sailing vessel were exposed to a mutual meeting by each other in the night time at sea, substantially approaching head and head upon closely collateral lines, if not actually on a coincident one.

The American and English cases will not be cited at large, as the basis of the fundamental doctrine of that maritime rule. Two only out of the decisions of the Supreme Court of the United States, are referred to, which pointedly exhibit the fulness and conclusiveness of the principle, (The Genessee Chief, 12 How. 443; Haney vs. The Baltimore Steam Packet Company, 23 How. 287), and accordingly so soon as the Potomac had neared the schooner to a threatening proximity in the night time, it was incumbent upon her instantly to stop her headway, or ease her engine so as to have prompt control of her own movement back or ahead as might be needed. The tortious misconduct was thus consummated.

This doctrine of law was emphatically settled by the highest judicial authorities, and after having been continued the inflexible

rule of maritime law in the American and English jurisprudence indefinitely, has recently been sanctioned and solemnly declared by act of Congress and established the permanent policy of our national legislation. The purpose has been vigorously fostered and promoted for a long period, to bring the administration of maritime law practically upon the seas, to the highest simplicity and certainty in its usages and observances: to relieve the actual governing of that most important class of public business under charge of sea-faring men unskilled in letters and especially so in nautical technicalities and mixed up with the practices of navigation; and accordingly it has been found long desirable in trading communities to build the body of binding sea laws upon the most concise and practical foundation, and under the clearest and most direct authority. Great progress has been successfully making in that effort by judicial tribunals—other associations—trinity masters—and most recently by Congress, which are all approximating to the hopeful result of soon placing rights and responsibilities of seamen at sea, under the guardianship of positive laws, independent of the opinions and surmises of individual witnesses as to the actings or omissions of seamen in performance of their obligations. The Statute passed by Congress was of this title and description.

"An Act fixing certain Rules and Regulations for preventing collisions on the water approved April 29, 1864." This Act adopted provisions directly pertinent to the inquiries in this cause; and although it may not be an authoritative enactment governing this particular case *Ex vigore proprio*, yet in the character of a declaratory enactment, the act will be of highest force in indicating the policy of and maintaining regulations of the tenor of the judicial decisions then subsisting, and the purpose of Congress to confirm and maintain the same thoughout our vastly active marine in all navigable waters.

The provision of Statute (page 60, article 15) establishing the Regulations governing the meeting between "sailing ship and ship under steam" enacts, whatever method of approach and meeting is employed: "If two ships, one of which is a sailing ship, and

the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship."

By re-enacting the language of the judgment of the courts, it is to be fairly intended that the old form and spirit of the principle declared bythe judiciary will be enforced in the same sense as if this collision had happened in May 1847 or February 1858, and had thus the super added sanction of being re-affirmed by positive law.

The claimants insist strenuously that the sailing vessel was guilty of gross misconduct in navigating in the night time, at the time of this collision, without exhibiting lights conspicuously in warning of her course and position, to other vessels in her vicinity; and that she was moreover culpably navigated at the time by suddenly changing the course she had been pursuing, and because of which the steamship alleged she was taking measures to avoid her. This allegation and charge in the defence the Court deems irrelevant in law and accordingly omits a consideration of the evidence offered in its support.

Article 20 of the above Act of Congress of April 29, 1864, leaves the obligations in respect to carrying lights or signals on vessels under the common rule subsisting upon the subject, under the maritime laws.

The recent Act of 1864, referred to, makes no change of the law governing the doctrine of collisions as in force when this transaction took place between these vessels in July, 1859. A law enacted several years posterior to the event which is the subject of a suit, cannot prescribe the rule which supplies the remedy or defence governing the action. Neither party can avail himself on this trial, of support from new provisions of law introduced since the cause was in litigation. But this Statute proposes no positive alterations, (except, perhaps in relation to fog signals), the other enactments are essentially affirmative of the familiar usages and practices in collision actions before the United States Courts, and do not assume to enlarge the range of responsibilities or exemptions of parties in regard to matters existing prior to the positive law connected with the subject.

The defence set up by the steamer to the action, is, that the schooner wrongfully caused the injury suffered on the occasion through her own culpable disregard of the laws of navigation in going to sea; neglecting to expose standing lights to view at that time and place, both because of her duty under the general laws of navigation to carry and display such lights, and because of knowledge that the steamer failed by that fault to be warned of the near approach of the schooner to a collision with the steamer.

There are local customs and usages, and statutes and regulations of particular States and sectional authorities, requiring lights to be displayed at night on board, generally at moorings or anchor, and in thoroughfares, or sometimes on coast navigation on navigable vessels of special employments; but as Judge Grier remarks, (2 Wallace, C. R. R. 273) no reliable evidence exists in the books that the law requires sailing vessels navigating the high seas after night, to carry signal lights. This subject is frequently adverted to by other courts and commentators. (9 N. Y. Legal Observer, 232. Sprague Adm., Dec. 160, 1 Parsons, Mar. Law 192, note 3, and numerous references there given to other authorities).

In this condition of the law it cannot be pronounced that the schooner in this instance was guilty of an illegal act or dereliction of maritime duty, in not displaying lights conspicuously in her voyage at sea at the time of the collision with the steamer Potomac.

Besides, the evidence is equivocal as to the fact. The master of the schooner testifies that no light was set up on her that night. The helmsman states one was displayed and was burning at the time the two vessels were coming together He, the wheelsman, steered the schooner, looking at the steamer and noticing her over the light of the schooner. The witnesses on board the steamer, do not appear to have given evidence on that point.

A gross irregularity, and not being clearly explained, constituting a marked fault, was committed by the steamer in continuing to come upon the schooner, without stopping or even easing her engine, for a distance of half or quarter of a mile, the steamer

moving nine knots the hour, and schooner supposed to be of about half that speed, directly towards each other, and during that period, it is not proved that any efficient act was done by the steamer, for their common protection and safety.

A sudden bustle and confusion was indicated on board each vessel; men in alarm crying out to the opposite crew to change helm and keep out the way of the other, or that they would be afoul, or cries of that kind; a deck hand on the steamer, rushing back to ring the bell of the steamer, and the master apparently roused from his berth, and flying to, and striking the bell amidst the confusion; and the proofs gathered in the fright and disorder, leaving it equivocal whether the officer having charge of the deck had not retired within his room and remained there asleep, unheeding his charge of the deck, until he started there suddenly after the master had arrived and rung the bell to stop, as the collision was actually consummated, and the schooner was foundered and lost, by the first and only blow.

The few instants for observation, or even consciousness, left the two crews, seem to allow meagre opportunities for the men awake to collect and furnish an intelligent and reliable narrative of what was done or witnessed by the co-actors and bystanders.

I do not, therefore, adjudge this case upon an appreciation and weighing of the facts patent upon the proofs presented upon the hearing of the cause. I take the admonitions and wise cautions of our courts of justice and legislatures as the guide, and pronounce the actual offence and dangerous fault to have been the disobedience of the plain and peremptory mandates of the law emphatically declared to managers of steam vessels who are meeting with sailing vessels, or are proceeding in such direction as to involve risk of collision between the two, that "the steamship shall keep out of the way of the sailing ship."

The *corpus delicti* of the steamship Potomac on this occasion, was disobedience of that plain law. She had ample time and clear ability to fullfil it, by stopping her movement until the danger would cease, or be safely avoided. And because the steamer did not faithfully execute that duty directly charged

upon her, the interdicted offence has been perpetrated, and she must pay the penalty denounced by the law, without regard to to the mistakes or ignorance under which the officers or crew of the steamer may have acted.

Decree that the libellant recover the damages incurred from the collision, with costs. Reference to Commissioner to ascertain and report amount of such damages, &c., &c.

# Circuit Court of the United States,

FOR THE SECOND CIRCUIT.

MOTT BEDELL,

*vs.*

THE STEAMSHIP "POTOMAC," HER TACKLE, &C.

## OPINION OF THE COURT.

NELSON, C. J.

The collision occurred in this case between the schooner A. V. BEDELL and the steamer on the night of the 7th July, 1859, in the Chesapeake Bay a little below the mouth of the Rappahanock River, the schooner was struck on her starboard side just abaft her fore rigging by the bow of the steamer, cutting deeply into and immediately sinking her, resulting in a total loss. The schooner was ascending and the steamer descending the bay in nearly opposite directions, the schooner at the time discovered by the hands on the steamer being half a point on her (steamer's) starboard bow. This was when the vessels were some three quarters of a mile apart. As soon as the schooner was discovered in this position the steamer starboarded her helm inclining some two points to the eastward with a view to give a wide berth to the schooner, and finding the schooner still neared her she again starboarded immediately slowed and backed, but without preventing the collision. The wind was a fresh six knot breeze west northwest and the schooner steering by the wind close hauled. The better opinion on the proofs is that the schooner

had no lights in her fore-rigging, and though it appears that the steamer showed her full complement of lights required by law she was not seen by the hands on the schooner till within a half or quarter of a mile of her. The night was not dark being starlight.

The question in the case is whether or not the steamer was in fault, under the circumstances, in not avoiding the schooner.

It is quite clear, if the schooner had kept her course instead of porting her helm and changing it to the eastward, it would have been the duty of the steamer to have taken care of her. But the change of course brought the schooner across her track, and as is apparent, produced the collision. It is admitted this change of course took place as stated, but it is insisted that it did not occur till the moment of collision. Such is the testimony of Liebbrane, the wheelsman, on board the schooner, the only witness that it appears has been examined in the case, at least his testimony is the only evidence of any witness on board, in the record. But the evidence is uncontradicted on the part of the respondents that the collision occurred after the steamer had twice starboarded her helm, leaving the schooner in the position she was first seen, a wide berth to the west. It is manifest, the schooner must have changed her course to the east earlier than stated by the wheelsman, or upon the greatly preponderating weight of the proofs, the collision could not have happened, for, if she had kept her course, the steamer, which first saw her on the starboard bow, three quarters of a mile below, and immediately starboarded her helm two points, and moving at the rate of nine miles the hour, must have been far to the east. We think, also, that the hands on board the schooner must have been remiss in their duty, or they could have seen the steamer before she approached within half or a quarter of a mile. There where three men on the deck of the schooner at the time, the captain, the lookout and the wheelsman, the latter, of whom as we have said alone has been examined.

I think the court erred in charging the steamer on the proofs, and must therefore, reverse the decree and dismiss the libel.

Wm. J. Read, Law and Job Printer, 111 Fulton Street, New York.

IN THE

# Supreme Court of the United States.

Mott Bedell,

*vs.*

The Steamer Potomac, &c.

With slight and immaterial differences, the witnesses all agree as to the main facts, and clearly establish that the collision was caused by the violation, on the part of those in charge of the libellant's schooner, of a settled rule of navigation and good seamanship—*i. e.*, that a vessel entitled to her course must keep it.

The schooner, the "A. V. Bedell," on a voyage from Norfolk to Alexandria, had reached a point in the Chesapeake a little below the mouth of the Rappahannock, and was sailing due north with a fresh, and so good working breeze (her wheelsman, fol. 27). The steamer, the "Potomac," was bound from Baltimore to Norfolk, sailing south (her mate, fol. 59). The course of the steamer was to the eastward of that of the schooner (libellant's witnesses, William Robertson, fol. 106; John Byrne, fol. 111; who testify that the schooner bore on the steamer's starboard bow when first observed; and to the same

effect the testimony of the "Potomac's" captain, fol. 38, and of her mate, who was in charge of the deck at the time, fol. 58). The case was that, therefore, of two vessels approaching each other on parallel lines, such that, if each continued her course, they would clear, each having the other on her starboard side, and by a distance which would be increased as the steamer starboarded her helm, so as to keep further to the eastward. That was exactly what the steamer attempted. The schooner was reported on the steamer's starboard bow when about three-quarters of a mile distant, and the steamer's helm was at once starboarded two points and steadied (the steamer's mate, fol. 58, and her wheelsman, fol. 117); when it was seen that the schooner's course was being improperly changed across the steamer's bow, the steamer again starboarded her helm (same evidence).

The steamer, therefore, from first to last, starboarded her helm, observing the rule which required her to keep out of the way.

In every other respect was the steamer free from fault. She was commanded by a careful master, and had a careful and competent first and second officer,—both, subsequently, in Government service (Mr. Clark, one of the "Potomac's" owners, fol. 36, and evidence of the men themselves, fols. 37, 57).

Her speed was but nine miles an hour, less even than her usual rate of speed, which was low—she was a dull sailer (her captain, fol. 38, her wheelsman, fol. 111); she had all her lights set and one extra light, and so could be readily observed at a distance of two to three miles (her captain, fol. 39; mate, fol. 59; wheelsman, fol. 116, and the statement of the schooner's captain to Captain Baymore, fol. 95, and Mr. Stone, the Notary, before whom he noted protest, fol. 78); she had a competent lookout by whom the schooner was observed and reported as soon as she could be seen (uncontradicted testimony of all claimant's witnesses, fols. 58, 102, 110); and as soon as her fault in changing her course across the steamer's bow made imminent a collision, the latter rung her bell to stop, and then reversed her engine (her captain, fol. 39;

mate, fol. 59; wheelsman, fol. 103, and lookout, fol. 112; and the statement of the schooner's captain to Mr. Stone, the Notary, fol. 79).

It will thus appear, that the collision could not have occurred but through some fault of the schooner, and the evidence makes clear that she was guilty of such fault. Having the right, and being under the obligation to maintain her course, she changed it, and changed it directly across the steamer's bow, so as to bring about the very collision which ensued.

That she thus changed, is established by the evidence of all the "Potomac's" witnesses (fols. 39, 49, 60, 56); of the only man examined from the schooner, who says that his captain ordered him to put his helm up, and that he did so put his helm aport (fol. 28); of the schooner's captain who told Captain Baymore, a passenger on the "Potomac," that when he made the steamer's lights he directed the man at the wheel to keep the schooner off two or three points to the eastward, and later, hard up his helm (fol. 96); by the fact that in no other way could the vessels come into contact with each other; that the steamer struck the schooner with a square blow (libellant's witness, Baker, fol. 31), and that the force of the blow contributing, the head of the schooner was worked around from the north to the southward and eastward, causing her sails to jibe.

The schooner's captain had died before the trial, but the trial did not come off till February 16, 1865; the collision was on July 7, 1859, so that it does not appear that there was not more than five years, during which the captain's deposition could be taken. The captain's reiterated avowals that the collision was due to his mistake fols. 40, 59, 79, 96), made not to persons interested in the "Potomac," but among others to the very Notary before whom he made his protest (fol. 79), and not explained by any testimony from the captain, are confirmed by the fact, that of the crew of the schooner only one was examined, and that the libellant immediately put himself in communication with two of the steamer's men (fols. 105, 113), and eventually took their depositions.

These very men, both by their depositions, and by the written statements made by them, immediately after the collision, shew that the collision was due to the fault of the schooner in changing her course.

The schooner was a sailing vessel, on the wind (libel, fol. 1). The "Potomac," a steamer, properly assumed she would keep her course.

"It is a fault for a vessel entitled to her course, as "against the colliding vessel; as for instance, a sailing "vessel against a steamer, or a vessel, close hauled, "against one with the wind free to luff, *keep away*, or in "any way change he course."

*Hall* v. *the propeller* "*Buffalo*," 1 *Newberry*, 115.

*Schooner* "*Catharine*" v. *Dickinson*, 17 *How.*, 170.

*Bentley* v. *Coyne*, 4 *Wallace*, 512.

"Sailing vessels when approaching a steamer must "keep their course, and steamers, under such circum- "stances, as a general rule, are required to keep out of "the way.

"Under this rule the steamer must of necessity deter- "mine for herself, and upon her own responsibility, inde- "pendently of the sailing vessel, whether it is safer to go "to the right or the left, or to stop; and in order that "she may not be deprived of the means of determining "the matter wisely, it is required that the sailing vessel "shall keep her course and allow the steamer to pass "either to the right or left, or to adopt such measures "of precaution as she may deem best suited to enable "her to perform her duty, and fulfill the requirement of "the law to keep out of the way."

*Steamship Co.* v. *Rumball*, 21 *How.*, 372, 384.
*now made an Article of the Act of April* 29, 1864, 13 *Stat. at Large*, 58, *Art.* 18.

The schooner disregarded this rule, and, as a natural consequence, produced a collision, which was due solely to her own fault. Nothing could display a greater want

of suitable vigilance and care, than the whole management of the schooner, aside from the change of course which caused the collision.

The steamer, though her lights could be seen several miles off (fol. 39), was not observed from the schooner till within half a mile, or about two minutes before the collision (her wheelsman, fol. 28), and was not then reported by any lookout, but first seen by the man at the wheel, and, so far as his testimony discloses, only seen by him (fol. 28). The man called a lookout, whose inattention is thus proved, is not examined, though it was proved his deposition might have been taken (fol. 33); and the schooner did not observe the ordinary precaution of exhibiting a light, customary at that place (Mr. Foote, fol. 62), now made necessary by the Act of April 29, 1864 (13 *Statutes at Large, p.* 58, *Art.* 5), and at the time made by Admiralty Law an element in determining the question of fault.

*The R. B. Forbes*, 1 *Sprague*, 328; *and Cases cited*, 21 *How.*, 2.

That the schooner had no light, all her crew told the Notary (fol. 79); and that the captain was aware that it was his duty to have a light, is obvious from his ineffectual effort to arrange one when too late (his statement to Capt. Watson and the steamer's mate, fol. 59). Against such positive testimony, the libellant's evidence that his captain was a careful man is of no value; about as material as the statement, that before the schooner was reported, the steamer's mate had been asleep, which he says was not true (fol. 60).

The District Judge says that he decided the case without reference to the facts as established by the evidence. His language is: "I do not therefore adjudge this case "upon an appreciation and weighing of the facts patent "upon the proofs presented upon the hearing of the cause." The claimants accept and insist upon the rule of navigation, upon which is predicated Judge Bett's opinion: "If two ships, one of which is a sailing vessel, and the "other a steamship, are proceeding in such directions as

"to involve risk of collision, the steamship shall keep "out of the way of the sailing ship," now incorporated in *Act of April* 29, 1864, *Art.* 15.

The evidence puts beyond question that as soon as the schooner was seen from the "Potomac," the latter took measures to prevent collision which would have been effective but for the fault of the schooner in changing her course. The District Judge seemed to think that these measures were adopted too late. They were adopted as soon as the schooner could be observed from the steamer. If the schooner had had a light she would have been sooner observed, and these precautionary measures sooner taken—that she did not, certainly was not the steamer's fault. The schooner's change of course which produced the collision, was not however, excused by dangerous proximity of the steamer at the time. As to this the claimants are willing to take the evidence of the only man examined from the schooner. On his cross-examination, Liebrand says (fol. 30), "It was "about two minutes, as near as I can come to it, before "the collision that I put my helm hard up." The vessels were approaching at the united rate of thirteen and a half knots an hour, or about a mile in four minutes, so that two minutes from the collision when the schooner improperly commenced to keep off across the bow of the steamer the vessels were half a mile apart, ample to enable the schooner to deliberately observe the rule requiring her to keep her course. The libellant is in no position to complain of the inaccuracy of this witness's statement of time and distance. He however, according to all claimants' evidence, was correct. The steamer's officer of the deck says that when first observed the schooner was three-quarters of a mile off (fol. 58); after the schooner had opened from the steamer sufficiently to avoid all risk the steamer's wheel was steadied, and then put hard a starboard when the schooner undertook to change across her bow.

JNO. E. PARSONS,
*for Appellees.*

# Supreme Court of the United States.

BEDEL

*vs.*

THE STEAMER POTOMAC.

BRIEF OF MR. B. R. CURTIS FOR CLAIMANT.

This is a cause of collision. The collision occurred in the Chesapeake bay, about 12 o'clock on the night of the 7th of July, 1859, between the schooner A. V. Bedel and the steamer Potomac. The schooner was heading about north, going up the bay, sailing by the wind, which was about W. N. W. On deck were the captain, one man at the wheel, and one forward, stationed to look out. (Rec., p. 11.)

The steamer was bound down the bay, and was sailing due south, having all the lights required by law burning in their proper places. (Rec., p. 15.)

William Robinson, the steamer's look-out, reported to the second mate, who was at the moment in charge of the deck, that a vessel was on the starboard bow. The mate ordered the helmsman to starboard the helm two points. The mate then saw the schooner himself about half a point on the starboard bow, distant about three-fourths of a mile, and ordered the helmsman to steady the helm. The mate soon discovered that the schooner was nearing the steamer, and ordered the helmsman again to starboard the helm. (Rec., pp. 23, 43, 44.)

The captain, who had been in his room, separated from the pilot-house only by an inch-board partition, hearing the mate hail the schooner, jumped into the pilot-house and rang the bell, and stopped the engine. (Rec., p. 15.)

There does not appear to have been any want of vigilance

in the steamer's look-out. And as soon as he reported a vessel on the starboard bow, the proper order was given by the mate to starboard the helm, and the course of the steamer was changed four or five points, (Rec., p. 117,) sufficiently to avoid the schooner, if the latter had kept her course. (Rec., pp. 40, 59, 60.) But she did not keep her course.

This is manifest, 1st, from the fact that the collision occurred in the manner described, showing that when it occurred the schooner had fallen off from about a north course to nearly an east course, (Record, fol., 31, 39;) 2d, because the only man on board the schooner who was examined as a witness, says that he put his helm hard up by the captain's order about two minutes before the collision, his vessel then swinging off, and that the steamer put her helm up also and kept running off too, (Record, fol., 28;) 3d, if there could be any justification for this change of the schooner's course, why was not the master examined by the libellants to show it: neither he nor the look-out have been examined; 4th, the master of the schooner, at the time of the transaction, and when he noted his protest, admitted that the collision occurred through his own fault. (Record, fol., 40, 59, 60, 78–80, 96.) This is legal evidence, (see authorities in the Enterprise, 2 Curtis, C. C. R., 320,) and they do not call the master to contradict or explain these admissions.

The owner of the schooner, soon after these occurrences, put himself into friendly relations with the look-out and the helsman of the steamer. He has examined them as witnesses. Their testimony confirms that of the officers of the steamer in all but a few particulars, none of which is important, save that the helsman says the mate was asleep when the schooner was reported to him. In this he is directly contradicted by the mate, (Record, fol., 60,) and by his own previous statement made to Mr. Parsons, (Record, fol., 55,) and he does not pretend in his deposition that, when the schooner was reported, there was any want of promptness on the part of the mate in giving the necessary order to starboard the helm.

The opinion of the circuit court is printed as an appendix to this brief.

B. R. Curtis.

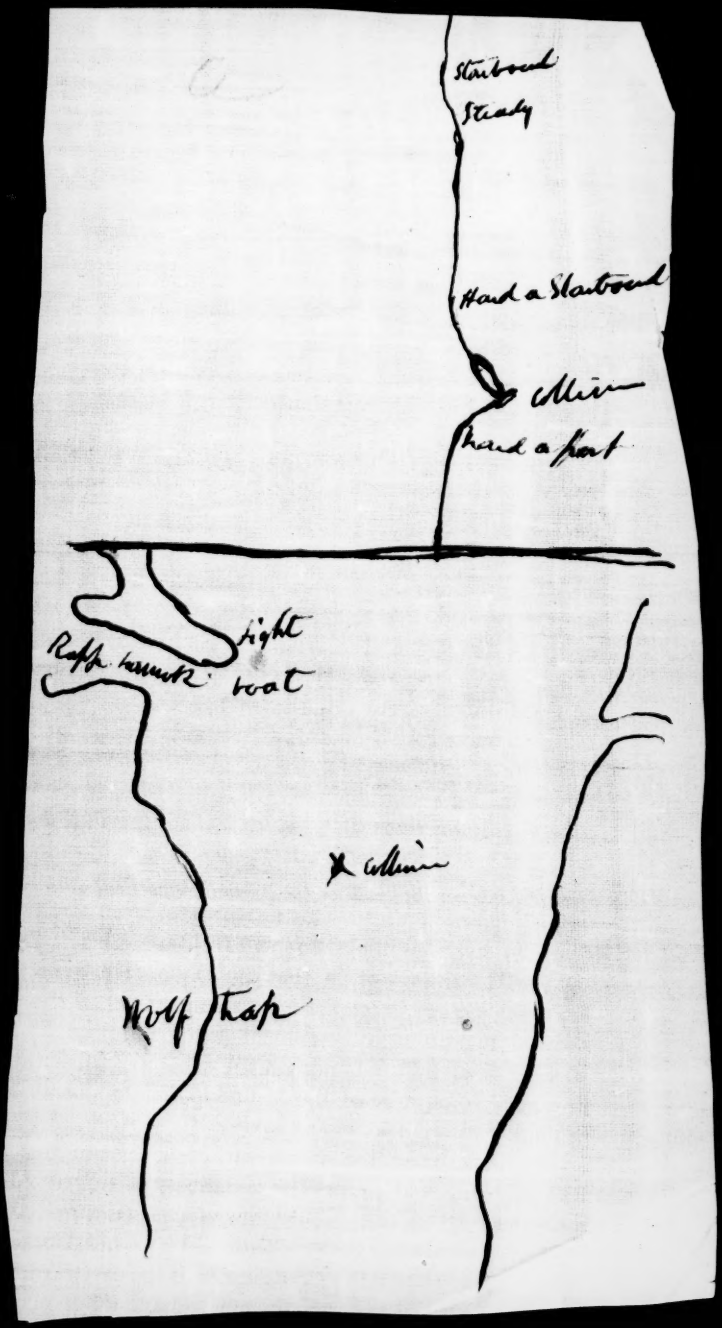
UNITED STATES CIRCUIT COURT—SOUTHERN DISTRICT.

MOTT BEDEL
*vs.*
STEAMER POTOMAC.

NELSON, J.—The collision occurred in this case between the schooner *A. V. Bedell* and the steamer on the night of the 7th July, 1858, in the Chesapeake bay, a little below the mouth of the Rappahanock river. The schooner was struck on her larboard side, just abaft her fore-rigging, by the bow of the steamer, end on, cutting deeply into and immediately sinking her, resulting in a total loss. The schooner was ascending and the steamer descending the bay in nearly opposite directions; the schooner at the time discovered by the hands on the steamer being half-a-point on her (steamer's) starboard bow. This was when the vessels were some three-quarters of a mile apart. As soon as the schooner was discovered in this position the steamer starboarded her helm, inclining some two points to the eastward, with a view to give a wide berth to the schooner; and finding the schooner still neared her, she again starboarded, and immediately slowed and backed, but without preventing the collision. The wind was a fresh six-knot breeze, west-northwest, and the schooner steering by the wind, close-hauled. The better opinion, on the proof, is, that the schooner had no lights in her fore-rigging, and though it appears that the steamer showed her full complement of lights required by law, she was not seen by the hands on the schooner till within a half or quarter of a mile of her. The night was not dark, being starlight.

The question in the case is, whether or not the steamer was in fault, under the circumstances, in not avoiding the schooner?

It is quite clear, if the schooner had kept her course instead of porting her helm and changing it to the eastward, it would have been the duty of the steamer to have taken care of her. But the change of course brought the schooner across her track, and, as is apparent, produced the collision. Such is


Starboard
Steady
Hard a Starboard
Hard a Port
light
boat
Wolf Trap

the testimony of Liebbranc, the wheelsman on board the schooner, and the only witness that it appears has been examined in the case; at least his testimony is the only evidence of any witness on board in the record. But the evidence is uncontradicted on the part of the respondents, that the collision occurred after the steamer had twice starboarded her helm, leaving the schooner in the position she was first seen, a wide birth to the west. It is manifest the schooner must have changed her course to the east earlier than stated by the wheelsman, or, upon the greatly preponderating weight of the proofs, the collision could not have happened; for, if she had kept her course, the steamer, which first saw her on the starboard bow, three-quarters of a mile below, and immediately starboarded her helm two points, and moving at the rate of nine miles the hour, must have been far to the east. We think, also, that the hands on board the schooner must have been remiss in their duty, or they could have seen the steamer before she approached within half or quarter of a mile. There were three men on the deck of the schooner at the time: the captain, the look-out, and the wheelsman, the latter of whom, as we have said, alone has been examined.

I think the court erred in charging the steamer on the proofs, and must therefore reverse the decree and dismiss the libel.